

Vol. III
TRANSCRIPT OF RECORD

(Pages 677 to 942)

Supreme Court of the United States

OCTOBER TERM, 1955

No. 323

**UNITED STATES OF AMERICA, EX REL. DAVID
DARCY, PETITIONER,**

vs.

**EARL D. HANDY, WARDEN OF BUCKS COUNTY
PRISON, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 15, 1955

CERTIORARI GRANTED OCTOBER 21, 1955

TABLE OF CONTENTS

	PAGE
I. Relevant Docket Entries	1a
II. Pleadings	5a
(1) Petition for Writ of Habeas Corpus and Rule to Show Cause	5a
(2) Answer of John W. Claudy, Warden of Western State Penitentiary, to Petition for Writ of Habeas Corpus	16a
III. Transcript of Hearing Upon Petition	25a
(1) Testimony	25a
RELATOR'S WITNESSES:	
Walter Schroeder—Direct Examination	91a
Recalled—Direct Examination	134a
Recalled—Cross-examination	155a
Recalled—Re-direct Examination	289a
Recalled—Re-cross Examination	312a
Recalled—Re-direct Examination	349a
Reverend Frank J. Damrosh—Direct Exami- nation	124a
Cross-examination	130a
Reverend William Babinsky—Direct	159a
Cross-examination	167a
Re-direct Examination	180a
G. Cole Farrier—Direct Examination	181a
Cross-examination	192a

TABLE OF CONTENTS

	PAGE
Re-direct Examination	198a
Re-cross Examination	203a
Re-direct Examination	204a
A. Russell Thomas—Direct Examination	207a
Cross-examination	228a
Re-direct Examination	236a
Re-cross Examination	243a
Re-direct Examination	245a
Recalled—Re-direct Examination	251a
Recalled—Re-direct Examination	382a
Recalled—Re-cross Examination	384a
Recalled—Re-direct Examination	384a
Recalled—Re-direct Examination	421a
Recalled—Re-cross Examination	426a
Recalled—Re-direct Examination	427a
Recalled—Re-cross Examination	429a
Recalled—Re-direct Examination	430a
William Lester Trauch—Direct Examination	246a
Cross-examination	247a
Re-direct Examination	249a
Re-cross Examination	250a
Recalled—Re-direct Examination	420a
Doctor Carl J. Hoffman—Direct Examination	253a
Cross-examination	261a
Re-direct Examination	271a
John J. Kerrigan—Direct Examination	275a
George A. Koehler—Direct Examination	281a
Cross-examination	285a
Re-direct Examination	286a
William A. Lynch—Direct Examination	287a
Cross-examination	288a

TABLE OF CONTENTS

	PAGE
Howard R. Price—Direct Examination	314a
Cross-examination	320a
Re-direct Examination	328a
Re-cross Examination	340a
Mrs. Elizabeth M. Degan—Direct Examination	350a
Cross-examination	362a
Matthew L. Godshall—Direct Examination	363a
Cross-examination	376a
Re-direct Examination	377a
Re-cross Examination	379a
Re-direct Examination	380a
Recalled—Re-direct Examination	385a
Recalled—Re-cross Examination	385a
Serrell Detlefson—Direct Examination	385a
Cross-examination	387a
Re-direct Examination	388a
George Fox—Direct Examination	389a
Cross-examination	391a
Miss A. Patterson—Direct	392a
Cross-examination	398a
Re-direct Examination	416a
Re-cross Examination	416a
Re-direct Examination	418a
Knickerbocker Davis—Direct Examination	431a
Cross-examination	449a
Re-direct Examination	459a
Re-cross Examination	470a
Re-direct Examination	471a
Miss Marion R. Ford—Direct Examination	474a
Cross-examination	489a

TABLE OF CONTENTS

	PAGE
Re-direct Examination	534a
Re-cross Examination	536a
Joseph Darcy—Direct Examination	537a
Cross-examination	544a
Re-direct Examination	556a
Re-cross Examination	568a
Mrs. Inez Darcy Heckman—Direct Examination	585a
Cross-examination	594a
Miss Margaret C. Gordon—Direct	611a
Cross-examination	618a
RESPONDENT'S WITNESSES:	
Clarence H. Dannenhower—Direct	636a
Cross-examination	652a
Mrs. Ethel M. Van Sant—Direct Examination	674a
Cross-examination	685a
Gideon S. Gahman—Direct Examination	689a
Cross-examination	696a
Corporal Harold Dando—Direct Examination	701a
Cross-examination	709a
Felix R. Gowan—Direct Examination	710a
Cross-examination	713a
Clarence Irwin—Direct Examination	714a
Cross-examination	717a
Attorney Willard S. Curtin—Direct Examination	720a
Cross-examination	736a
Re-direct Examination	793a
Re-cross Examination	795a

TABLE OF CONTENTS

	PAGE
Re-direct Examination	796a
Recalled—Re-cross Examination	916a
Recalled—Re-direct Examination	928a
Ernest M. Leedom—Direct Examination	796a
Cross-examination	802a
Direct Examination	808a
Cross-examination	815a
Re-direct Examination	822a
Edward F. Wunsch—Direct Examination	830a
Earl D. Handy—Direct Examination	836a
Raymond C. Reed—Direct Examination	843a
Cross-examination	848a
Re-direct Examination	853a
Re-cross Examination	854a
Honorable Edward G. Biester—Direct Examination	870a
Cross-examination	885a
(2) Exhibits	943a
(a) RELATOR'S EXHIBITS:	
No. 10(a), Oyer and Terminer Criminal Docket, Bucks County, 1943	943a
No. 10(b), Oyer and Terminer Criminal Docket, Bucks County, 1943	946a
No. 10(c), Oyer and Terminer Criminal Docket, Bucks County, 1943	948a
No. 10(d), Oyer and Terminer Criminal Docket, Bucks County, 1943	951a

TABLE OF CONTENTS

	PAGE
No. 12, Doylestown Daily Intelligencer, December 23, 1947	953a
No. 13, Doylestown Daily Intelligencer, December 23, 1947	955a
No. 14, Doylestown Daily Intelligencer, December 24, 1947	959a
No. 15, Doylestown Daily Intelligencer, December 24, 1947	961a
No. 16, Doylestown Daily Intelligencer, December 26, 1947	964a
No. 17, Doylestown Daily Intelligencer, December 26, 1947	966a
No. 18, Doylestown Daily Intelligencer, December 27, 1947	967a
No. 19, Doylestown Daily Intelligencer, December 27, 1947	969a
No. 20, Doylestown Daily Intelligencer, December 27, 1947 (Editorial)	970a
No. 21, Doylestown Daily Intelligencer, December 29, 1947	972a
No. 22, Doylestown Daily Intelligencer, December 31, 1947 (Editorial)	974a
No. 23, Doylestown Daily Intelligencer, January 5, 1948	976a
No. 24, Doylestown Daily Intelligencer, January 5, 1948	977a
No. 25, Doylestown Daily Intelligencer, January 16, 1948	979a

TABLE OF CONTENTS

	PAGE
No. 28, Doylestown Daily Intelligencer, January 27, 1948	980a
No. 29, Doylestown Daily Intelligencer, January 27, 1948	981a
No. 31, Doylestown Daily Intelligencer, February 2, 1948 (Editorial)	982a
No. 34, Doylestown Daily Intelligencer, February 6, 1948	984a
No. 34, Doylestown Daily Intelligencer, February 6, 1948	986a
No. 35, Doylestown Daily Intelligencer, February 6, 1948	988a
No. 36, Doylestown Daily Intelligencer, February 10, 1948	989a
No. 37, Doylestown Daily Intelligencer, February 10, 1948	991a
No. 38, Doylestown Daily Intelligencer, February 11, 1948	992a
No. 40, Doylestown Daily Intelligencer, February 16, 1948	994a
No. 40, Doylestown Daily Intelligencer, February 16, 1948	995a
No. 41, Doylestown Daily Intelligencer, February 16, 1948	997a
No. 42, Doylestown Daily Intelligencer, February 18, 1948 (Editorial)	998a
No. 43, Doylestown Daily Intelligencer, March 1, 1948	999a

TABLE OF CONTENTS

PAGE

No. 46, Doylestown Daily Intelligencer, April 2, 1948	1001a
No. 48, Doylestown Daily Intelligencer, April 17, 1948 (Editorial)	1003a
No. 49, Doylestown Daily Intelligencer, May 7, 1948 (Editorial)	1005a
No. 51, Doylestown Daily Intelligencer, May 14, 1948	1007a
No. 53, Doylestown Daily Intelligencer, May 24, 1948	1009a
No. 56, Doylestown Daily Intelligencer, May 24, 1948	1011a
No. 57, Doylestown Daily Intelligencer, May 25, 1948	1013a
No. 58, Doylestown Daily Intelligencer, May 25, 1948	1015a
No. 57, Doylestown Daily Intelligencer, May 25, 1948	1018a
No. 59, Doylestown Daily Intelligencer, May 26, 1948	1019a
No. 60, Doylestown Daily Intelligencer, May 26, 1948	1020a
No. 61, Doylestown Daily Intelligencer, May 27, 1948	1024a
No. 61, Doylestown Daily Intelligencer, May 27, 1948	1025a
No. 62, Doylestown Daily Intelligencer, May 27, 1948	1026a

TABLE OF CONTENTS

	PAGE
No. 63, Doylestown Daily Intelligencer, May 28, 1948	1031a
No. 64, Doylestown Daily Intelligencer, May 28, 1948	1033a
No. 65, Doylestown Daily Intelligencer, May 29, 1948	1038a
No. 66, Doylestown Daily Intelligencer, May 29, 1948	1040a
No. 67, Doylestown Daily Intelligencer, June 1, 1948	1044a
No. 68, Doylestown Daily Intelligencer, June 1, 1948	1046a
No. 70, Doylestown Daily Intelligencer, June 2, 1948	1048a
No. 71, Doylestown Daily Intelligencer, June 2, 1948	1050a
No. 72, Doylestown Daily Intelligencer, June 3, 1948	1055a
No. 72, Doylestown Daily Intelligencer, June 3, 1948	1056a
No. 73, Doylestown Daily Intelligencer, June 3, 1948	1058a
No. 75, Doylestown Daily Intelligencer, June 4, 1948	1062a
No. 76, Doylestown Daily Intelligencer, June 4, 1948	1064a
No. 77, Doylestown Daily Intelligencer, June 4, 1948	1067a

TABLE OF CONTENTS

	PAGE
No. 78, Doylestown Daily Intelligencer, June 5, 1948	1068a
No. 79, Doylestown Daily Intelligencer, June 5, 1948	1069a
No. 78, Doylestown Daily Intelligencer, June 5, 1948	1070a
No. 78, Doylestown Daily Intelligencer, June 5, 1948	1071a
No. 79, Doylestown Daily Intelligencer, June 5, 1948	1073a
No. 79, Doylestown Daily Intelligencer, June 5, 1948	1074a
No. 80, Doylestown Daily Intelligencer, June 7, 1948	1075a
No. 81, Doylestown Daily Intelligencer, June 7, 1948	1077a
No. 82, Doylestown Daily Intelligencer, June 8, 1948	1079a
No. 82, Doylestown Daily Intelligencer, June 8, 1948	1080a
No. 83, Doylestown Daily Intelligencer, June 8, 1948	1082a
No. 84, Doylestown Daily Intelligencer, June 8, 1948 (Guest Editorial)	1086a
No. 85, Doylestown Daily Intelligencer, June 9, 1948	1087a
No. 85, Doylestown Daily Intelligencer, June 9, 1948	1088a

TABLE OF CONTENTS

	PAGE
No. 86, Doylestown Daily Intelligencer, June 9, 1948	1090a
No. 90, Doylestown Daily Intelligencer, June 10, 1948 (Editorial)	1093a
No. 94, Doylestown Daily Intelligencer, June 12, 1948	1094a
No. 95, Doylestown Daily Intelligencer, June 12, 1948	1096a
No. 94, Doylestown Daily Intelligencer, June 12, 1948	1097a
No. 96, Doylestown Daily Intelligencer, June 12, 1948	1098a
No. 101, Doylestown Daily Intelligencer, June 15, 1948	1099a
No. 102, Doylestown Daily Intelligencer, June 15, 1948	1101a
No. 105, Doylestown Daily Intelligencer, June 17, 1948 (Editorial)	1103a
No. 106, Doylestown Daily Intelligencer, June 19, 1948	1105a
No. 107, Newtown Enterprise, January 1, 1948	1106a
No. 108, Newtown Enterprise, January 1, 1948	1108a
No. 109, Newtown Enterprise, June 3, 1948	1111a
No. 110, Newtown Enterprise, June 3, 1948	1113a
No. 115 (C), Criminal Minutes, Bucks County, 1948	1117a
No. 123 (A), Quakertown Free Press, May 20, 1948	1123a

TABLE OF CONTENTS

	PAGE
No. 123 (C), Quakertown Free Press, May 27, 1948	1125a
No. 123 (C), Quakertown Free Press, May 27, 1948	1126a
No. 123 (D), Quakertown Free Press, June 10, 1948	1127a
No. 123 (E), Quakertown Free Press, June 10, 1948	1129a
(b) RESPONDENTS' EXHIBITS:	
No. 5, Certificate of Judge Hiram H. Keller ..	1133a
IV. Excerpts from Transcript of Trial of Commonwealth vs. David Darcy, June 7, 1948	1141a
(1) Voir Dire Examination of Jurors	1141a
(a) Harry T. Westlake (Relator's Exhibit No. 5A)	1141a
(b) William H. Slaughter (Relator's Exhibit No. 5B)	1143a
(2) Judge Calvin S. Boyer's Participation in the Trial (Relator's Exhibit No. 5E)	1144a
(3) Judge Hiram H. Keller's Charge and Objection of District Attorney Edward G. Biester (Relator's Exhibit 5E)	1146a
V. Requests for Findings of Fact and Conclusions of Law	1150a
(1) Relator's Request	1150a
(2) Respondents' Request	1180a

TABLE OF CONTENTS

	PAGE	
VI. Opinions of United States District Court	1191a	
(1) Opinion Denying Petition	1191a	
(2) Appendix to Opinion	1242a	
VII. Order of United States District Court Denying Petition	1244a	
VIII. Certificate of Probable Cause	1244a	
	Original	Print
Proceedings in the U.S.C.A. for the Third Circuit	1245	1245
Opinion, Hastie, J.	1245	1245
Dissenting opinion, Kalodner	1252	1251
Dissenting opinion, Biggs, C. J.	1265	1265
Judgment	1267	1267
Petition for rehearing (omitted in printing)		
Order denying rehearing	1268	1267
Order staying issuance of mandate	1292	1268
Clerk's certificate (omitted in printing)		
Order allowing certiorari	1297	1269

Volume III

(Court resumes on Thursday at 2:05 P. M. with all parties, including the Relator, David Darcy, present in Court.)

MRS. ETHEL M. VAN SANT, recalled.

DIRECT EXAMINATION (Continued).

BY MR. VAN ARTSDALEN:

Q. Mrs. Van Sant, I believe before the recess I asked you about the means by which the jury was fed. Will you explain that, please?

A. There was a long table at the end of the dining room, seated all of the jurors and the four tipstaves.

Q. And where was the dining room?

A. As you went in the lobby you turned to your right.

Q. The lobby of what?

A. The hotel. You could either enter the dining room by a door directly off the lobby to your right or through another entrance below that.

Q. Were all of the meals that were served to the jury served in that certain dining room?

A. Yes sir.

(660) Q. On all occasions will you state whether or not the jury had that one table?

A. Yes sir.

Q. Were there other tables in the dining room at that time?

A. Yes sir.

Q. Were other persons served meals in the dining room at the same time that the jury was being served?

A. Yes sir.

Q. Where did you sit at the dinner table?

A. I usually sat at the same end of the table from meal to meal.

Q. Which end was that?

A. Well perhaps, would I say the easterly end of the table. —

Q. Can you identify it in any way with the position where Mr. Dannenhower sat?

A. As I recall, it was at the opposite end of the table from Mr. Dannenhower.

Q. How near, if you know, was the nearest table to the one where you were seated?

A. Oh, eight feet, I would say; seven or eight feet.

Q. Did you on any occasion during the meals that were served there overhear any conversation from any of the other tables?

A. No sir.

Q. Do you recall whether on any occasion you saw any newspapers in and about the hotel?

A. No sir.

Q. How about specifically in the dining room?

A. No sir.

Q. Mrs. Van Sant, will you tell us, please, what was done in the evenings for the jury?

A. There was a room allotted to the jury and tipstaves on the (661) second floor where we always met, and there we passed the evening together.

Q. Was any other person allowed in the room except the tipstaves and the jury?

A. No sir.

Q. Were there any other persons allowed in the room except the tipstaves and the jury while the jury was in there?

Ethel M. Van Sant—Direct

A. No.

Q. What about the waitresses at the meals, did they engage in any conversation with any of the jurors?

A. No sir. They only gave their individual orders to the maids—waitresses.

Q. What about the rooms where the jurors stayed in the evenings?

A. In what way are you referring to —

Q. In their particular rooms. What can you tell us about the manner in which the jury stayed in their rooms?

A. When we all decided it was time to go to bed they were then—as I said, Mrs. Gwinner and myself saw that the women jurors went to their rooms, and they themselves locked their own doors. We never locked them in in case of fire.

Q. Were the jurors before retiring given any instructions by the tipstaves?

A. Oh yes. They were told not to leave their rooms.

Q. So far as you know, were those orders carried out?

A. Yes sir.

Q. Where was your room, Mrs. Van Sant?

A. I roomed with one of the jurors.

Q. Which one of the jurors?

A. Virginia Brillman. I believe she was an alternate.

Q. At any time throughout the course of that trial did you talk to any members of the jury or the alternates concerning this (662) case?

A. No sir.

Q. Did you overhear any conversation among any of the jurors or tipstaves concerning this case during its trial?

A. No sir.

Q. Were any directions or orders given in relation thereto?

A. By whom —

Q. Were any orders given by the tipstaves, so far as conversation about the case?

A. To the jurors you mean —

Q. Yes.

A. That is right.

Q. What, if any, were those orders?

A. They were not allowed to discuss it in any manner.

Q. Were any directions given as to the reading of newspapers?

A. They were told they were not allowed to have newspapers.

Q. And did any of the jurors have any or see any newspapers during that week that you observed?

A. They did not, sir.

Q. What about radio programs?

A. They didn't have any radios.

Q. Were any radio programs overheard?

A. No sir.

Q. What about television?

A. They didn't see any television at all.

Q. There has been testimony, I believe, as to the jury taking exercise during certain periods. What can you tell the Court about that, please?

A. We took walks usually one-half hour in the morning before we would come into Court and around to the back door into the (663) back entrance, and after our dinner in the evening we would take another short walk.

Q. Will you state whether the walks were always as a group?

A. Oh yes.

Q. Mrs. Van Sant, will you tell us, please, what you observed at any time during the course of that trial on the streets of Doylestown?

A. It was comparatively quiet, so far as the town was concerned.

Ethel M. Van Sant—Direct.

Q. Did any persons on the street at any time when you and the jury were on the walks attempt to talk to you or any of the jurors?

A. No sir.

Q. Were the jurors at any time taken by or through any crowds of people?

A. No sir.

Q. Did you observe—see or hear any commotions or disturbances outside of the courtroom during that trial?

A. No sir.

Q. How about inside the courtroom?

A. No sir, not to my knowledge.

Q. Mrs. Van Sant, during the course of the trial when the jury was in the courtroom where did you stay?

A. I sat directly in back of the jury. May I use the chart?

Q. Referring to "Relator's Exhibit No. 135," can you show us?

A. This chair here is another chair elevated that Mrs. Gwinner used.

Q. Now you are indicating a chair that is the furthest chair—strike that—is the chair immediately to the left of the entrance marked "Attorney's Room," immediately in front of the railing separating the spectators' benches from the main floor of the (664) courtroom, is that correct?

A. Yes sir. That was a raised chair, as described by Mr. Dannenhower. I either sat at times in this one next to Mrs. Gwinner —

Q. That would be left of Mrs. Gwinner?

A. Yes sir. —or the one on the other side of Mr. Dannenhower.

Q. What do you mean by "the one on the other side of Mr. Dannenhower?"

A. This chair here would be to his left.

Q. You are indicating the second chair from the left to

the left of the first aisle on the extreme right as one enters the courtroom and a chair immediately in front of the railing separating the spectators benches from the main floor of the courtroom, is that correct?

A. That is right, sir.

Q. Did you at any time hear any conversations from any spectators seated behind you?

A. No sir.

Q. Will you state whether there were any jurors closer to the place where the witnesses and spectators can remain than were you?

A. No sir.

Q. How close were you to the nearest juror and to the alternates?

A. I say I didn't always sit in the same chair. At times perhaps I was directly behind the alternates, which would be a position opposite the aisle. I would say, four or five feet.

Q. Was there an aisle between you and the alternates?

A. That is correct, sir.

Q. And how wide was that aisle?

A. I would say four or five feet.

Q. And what arrangements were made during the recess of Court for the personal convenience of the lady members of the jury?

(665) A. Either Mrs. Gwinner or myself would conduct them to the ladies' room.

Q. And where was the ladies' room located?

A. At that time it was on the second floor.

Q. Were the jurors, any of the lady jurors, ever allowed in—what did you do before any of the lady jurors were allowed in?

A. We inspected to see that no one else was in there.

Q. And on any occasion were any lady jurors allowed to

go into the ladies' room when there were other persons in there other than tipstaves or other members of the jury?

A. No sir.

Q. And on the occasions when lady jurors went into the ladies' room what, if any, precautions did you take against other persons going in?

A. We always went inside. There are two rooms. You would go in and on into the lavatory. We always stayed at the lavatory door to see that no one else entered.

Q. Mrs. Van Sant, do you recall whether on any occasion there were spectators or witnesses seated behind you in the section reserved for witnesses to your rear as you would be seated?

A. I would say spectators would be back there, but I never recall any witnesses back there.

Q. Can you give us any idea as to how many persons—spectators there were in the courtroom on any occasion?

A. It varied. The courtroom was never filled on any occasion.

Q. Mrs. Van Sant, were you in the courtroom on all occasions when the jury was in the courtroom?

A. Yes sir.

Q. During the Darcy trial?

A. Yes sir,

(666) Q. Mrs. Van Sant, do you recall seeing Judge Boyer in the courtroom?

A. I can't be specific as to what times he was in the courtroom. I know he was in the courtroom.

Q. There has been testimony that Judge Boyer was in the courtroom during Friday evening; do you recall that?

A. I have no recollection of that at all.

Q. Do you have any recollection where Mr. Biester was seated Friday evening?

A. No sir.

Q. Now, Mrs. Van Sant, do you recall the charge of the Court, not as to what was said, but do you recall that phase of the case?

A. Yes sir.

Q. Do you recall whether you observed Judge Boyer in the courtroom at that time?

A. I have no recollection of Judge Boyer being in there.

Q. Can you state or do you recall where Mr. Biester was seated during the charge of the Court?

A. No sir; I can not recall.

Q. Mrs. Van Sant, did you observe any spectators in the courtroom at any time throughout the trial or while you were in the Court in relation to the Darcy case, having any magazines in their possession?

A. No sir.

Q. Mrs. Van Sant, to your knowledge, did any persons whatsoever visit or converse with any members of the jury or the alternates at any time of the trial with the exception of the tipstaves, as you have related?

A. No sir.

(667) Q. There has been specific reference to an Anna L. Reed. Do you recall that juror?

A. I remember Mrs. Reed, yes.

Q. Do you know or did you know at that time the husband of Anna L. Reed?

A. No sir.

Q. Are you able to state whether or not the husband of Anna L. Reed visited her at any time throughout that trial?

A. Not to my knowledge, sir.

Q. On what occasions, if any, was Anna L. Reed not in your immediate presence?

A. I don't recall—after all, Mrs. Gwinner and I were both on duty. I don't recall Mrs. Reed being out of my presence, as far as the group is concerned.

Q. What about in the evenings?

A. I know we were all together in the evenings.

Q. What about at the time you retired?

A. As I say, when she went to her room —

Q. Do you recall whether she roomed with any other person?

A. I can not recall.

Q. Mrs. Van Sant, do you have any recollection of any note being passed by Judge Boyer to Mr. Biester?

A. No sir.

BY MR. MARGIOTTI: I object because he didn't ask her if she noticed anything unusual. It is leading and suggestive.

BY JUDGE MURPHY: Your objection is overruled.

BY MR. VAN ARTSDALEN: That is all.

(668) CROSS-EXAMINATION

BY MR. MARGIOTTI:

Q. You don't mean to leave the impression that no note was passed, Mrs. Van Sant; you mean you didn't see anything like that?

A. That is correct.

Q. That is what I thought. Now, Mrs. Van Sant, you have testified that you were a tipstaff in the Zietz-Foster trial?

A. Yes sir.

Q. And that you were also a tipstaff in the Darcy trial?

A. Yes sir.

Q. Now, do you know of any other person or persons who

occupied the same position you did during the two trials, a tipstaff in both trials?

A. Yes sir; Mrs. Gwinner.

Q. Is that "Winner" or "Gwinner?"

A. Gwinner.

Q. Any man?

Q. Who?

A. Mr. Gahman.

Q. Mr. Gahman. Anybody else?

A. There were three for the Zietz-Foster. They are the three. Myself, Mrs. Gwinner and Mr. Gahman—four; Mr. Dannenhower, Mr. Gahman, Mrs. Gwinner and myself.

Q. You say four for the trial. You don't mean to leave the impression the same four had been on the Foster-Zietz trial, but only three of those four had been on the Foster-Zietz trial; is that correct?

A. Three were on the Foster-Zietz trial; four were on the Darcy (669) trial.

Q. And of the four that were on the Darcy trial three had been on the Foster-Zietz trial, is that right?

A. Yes sir.

Q. When did you first officially learn that Darcy was to be tried on June 7?

A. I suppose—my recollection is at the conclusion of the Zietz-Foster trial we were notified to come back on Monday morning for the Darcy trial.

Q. And isn't it true that prior to that time the arrangement had been that only Foster-Zietz were to be tried that term and that Darcy was to be tried the following term?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI:

Q. Do you know —

BY JUDGE MURPHY: She was only a tipstaff.

BY MR. MARGIOTTI:

Q. Do you know, Mrs. Van Sant, whether—you have any knowledge as to whether or not prior to your learning the time that Darcy was to be tried or summoning of the jury whether or not that case was scheduled officially around the courthouse or by any official person that the case would be tried on that date?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: If she saw any notices as to the date of the trial, we (670) will permit her to answer yes or no.

BY THE WITNESS:

A. No sir; I knew of none.

BY MR. MARGIOTTI:

Q. Now, is there a newstand right across from the courthouse?

A: Across from the courthouse —

Q. Near there.

A. No sir.

Q. Kenny's Newsstand, do you know where that is?

A. Yes sir.

Q. Where is Kenny's Newsstand?

A. It is on State Street opposite the Doylestown Inn.

Q. On the same street the Doylestown Inn is located?

A. Yes sir.

Q. And in taking the jury to the Doylestown Inn would you pass Kenny's Newsstand?

A. No sir.

Q. You would take them on the other side?

A. That is correct, sir.

Q. Do you recall whether at any time you took them past Kenny's Newsstand?

A. I have no recollection of it, sir.

Q. As I understood your testimony for the District Attorney, you place yourself in this chair, or this one, or this one?

A. To the left of Mrs. Gwinner—I never sat in the same chair.

Q. I see. Which chair did you occupy?

A. This is a higher chair. I usually sat to the left of Mrs. Gwinner. I would say most of the time I sat here to the left of Mrs. Gwinner.

Q. So that we get this record straight, as the chairs are located (671) back of the jury, there would be one—which would be the high chair —

A. That is right.

Q. —two—three—four—five. Which chair did you usually occupy?

A. No. 2.

Q. No. 2. And was that chair on the floor—on the same level, say, as the jury?

A. Yes sir.

Q. So that you would have the jury in front of you?

A. Yes sir.

Q. And you would have—would you have an alternate in front of you, too?

Gideon S. Gahman—Direct.

A. At an angle.

Q. At an angle. And would you have part of—what I would call—the Clerk's bench in front of you?

A. That would be directly in front of me in clear view—directly in front of me.

Q. So that that bench would be directly in front of you?

A. Yes sir.

Q. I think we understand that now.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

MR. GIDEON S. GAHMAN, called and sworn on behalf of the Respondent, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Gahman, where do you live?

A. I live in Hairton Township, Bucks County.

(672) Q. What is your occupation?

A. A tipstaff of Bucks County Court.

Q. How long have you been a tipstaff of Bucks County Court?

A. Oh, approximately twenty-four years.

Q. Were you one of the tipstaves for the Darcy trial?

A. Yes.

Q. Will you tell us, please, when you were appointed as one of the tipstaves to take charge of the Darcy jury?

A. I was appointed the second day when they started to pick the jury the second day.

Q. Mr. Gahman, I want to refer you to "Relator's Exhibit No. 135." Are you able to interpret or understand that exhibit?

A. Yes sir.

Q. And will you tell us, please, whether that exhibit accurately depicts the conditions presently existing in the Bucks County Courthouse?

A. That is the way it is in the Bucks County Courthouse now.

Q. What, if any changes do you note on "Relator's Exhibit No. 135" from the conditions that existed at the time of the Darcy trial?

A. Well, there is another Judge's chair here and the witness stand was changed, the entrance to the witness stand.

Q. What about the tables that are shown on "Relator's Exhibit No. 135?"

A. They are about the same as they were that time.

Q. Now, Mr. Gahman, what did you do while the jury was being selected for the Darcy trial?

A. Well, as soon as the name was called I went out in the hall, got the other juror to come down from the second floor.

(673) Q. And after you were sworn as one of the tip-staves to assist in the charge of the jury will you describe to us briefly what your duties was?

A. Well, we took care of the jurors that were selected.

Q. What arrangements were made as to getting the clothing and necessities to the jury?

A. Well, when the jurors wanted something they made a note and we called up their homes for whatever they wanted.

Q. Did any of the jurors make any telephone calls during the course of the Darcy trial?

A. No.

Q. By what method was the clothing and other necessities delivered to the members of the jury?

A. They were delivered to the tipstaves in charge of the jury and we opened the packages in the presence of the jurors before it was delivered.

Q. Were any newspapers delivered to any of the jurors?

A. No newspapers.

Q. Any magazines?

A. No.

Q. Where did the jury stay during the trial?

A. The Doylestown Inn.

Q. And where did you stay?

A. The Doylestown Inn.

Q. Will you tell us briefly about the arrangements for feeding the jury?

A. Well, at one end of the Doylestown Inn, the dining room, we had a long table.

Q. Was that table—strike that. You state that it was at one end. Can you describe that a little more fully? All right, (674) let me ask you this: Where were other tables located in relation to this table that you have referred to?

A. Well, there was some other tables in the dining room about maybe eight to ten feet from our table where the jury was sitting.

Q. Will you state whether or not this table you ate at was at the far end of the dining room?

A. At the far end of the dining room.

Q. Was it alongside of any wall?

A. Yes, right the side of the wall.

Q. Did you overhear any conversations from any tables, any other tables besides the one at which the jury sat?

A. No.

Q. Where did you sit during the meals, sir?

A. Well, about the middle of the table.

Q. Was your back toward the other tables?

A. My back was towards the other tables.

Q. Did any of the jurors at any time throughout the Darcy trial converse with any other persons other than members of the jury or the tipstaves?

A. No.

Q. How was the jury conducted from the hotel to the courthouse?

A. Well, as a rule, there was one here—two tipstaves at the front and a couple in the back end of them.

Q. How far is the Doylestown Inn from the courthouse?

A. Oh, I would say about two blocks—two and one-half blocks.

Q. During those times did you always go by foot from the courthouse to the Doylestown Inn?

A. Always by foot.

Q. Were any radios delivered to any of the jurors in this trial?

(675) A. No radio.

Q. Were there any radios in the hotel rooms?

A. Not in our rooms.

Q. Will you describe the room where the jury stayed in the evenings before retiring?

A. Well, we had a room up on the second floor, a great big room.

Q. Was there any radio in that room?

A. No radio.

Q. Was there any television in that room?

A. No television.

Q. Was there any television in any of the jurors rooms?

A. No.

Q. Do you know if there were any radios in any of the jurors rooms?

A. No radios.

Q. What about magazines and newspapers?

A. No magazines, no newspapers.

Q. Mr. Gahman, were you in the courtroom on all occasions when the jury was in the courtroom?

A. Yes sir.

Q. Will you tell us, please, what you recall as to the number of spectators that were in the courtroom?

A. Oh, there were a little bit—the courtroom wasn't more than—a little better than one-half full. I would say about 250.

Q. Were you present during the Friday evening session?

A. I was.

Q. Do you recall seeing Judge Boyer at that session?

A. I don't remember.

Q. Where did you sit during the trial of this case?

A. Mr. Dannenhower was sitting right here at this aisle and I was (676) sitting to the left of Mr. Dannenhower.

Q. You would sit to the left of Mr. Dannenhower?

A. Yes.

BY MR. MARGIOTTI: The immediate left—is that the immediate left?

BY MR. VAN ARTSDALEN:

Q. Is that the immediate left, sir?

A. Yes, I would say so.

BY JUDGE MURPHY: Do you know what he means?

BY THE WITNESS: No, there was room for a couple of chairs in between.

BY JUDGE MURPHY: Were there a couple of chairs between you and Mr. Dannenhower? is the question.

BY THE WITNESS: No; no chairs.

BY JUDGE MURPHY: Did you sit right next to him? Did you sit beside him? Your chairs—were they beside each other?

BY THE WITNESS: No.

BY JUDGE MURPHY: Your witness.

BY MR. VAN ARTSDALEN:

Q. You said you did not sit alongside of Mr. Dannenhower, or that you did. Try to clear it up.

A. Mr. Dannenhower was sitting at the aisle. I was sitting maybe three or four feet left of Mr. Dannenhower.

(677) Q. Now did you overhear any conversation by any spectators or persons in the courtroom except the regular Court procedure?

A. No.

Q. At any time was the jury taken through any crowds of people?

A. No.

Q. Did you observe any disturbances in the courtroom during the course of the Darcy trial?

A. No.

Q. Did you see any magazines or newspapers in the courtroom at any time during the Darcy trial?

A. I didn't see any.

Q. Do you recall the portion of the case when the charge was made by Judge Keller?

A. I remember when the charge was made.

Gideon S. Gahman—Direct

Q. Will you state whether or not Judge Boyer was in the courtroom at that time?

A. I do not remember.

Q. Do you recall where Mr. Biester was seated at the time of the charge of the Court?

A. No. I don't remember.

Q. Were you in any sort of uniform during these proceedings?

A. I was in uniform.

Q. Will you describe just briefly what sort of uniform you were in?

A. I had a blue uniform with "Tipstaff" on the left elbow and we had a badge "Tipstaff."

Q. What other uniformed persons, if any, did you observe in the courtroom during this trial?

A. Not any that I remember.

Q. Were the lady tipstaves also in uniform?

(678) A. I don't believe they were. They had blue suits but no regular uniform.

Q. Are you familiar with Kenny's Newsstand?

A. I am.

Q. Where is that in relation to the Doylestown Inn?

A. That is across the street from the Doylestown Inn.

Q. Do you know whether or not newspapers were kept outside on the pavements during the course of the Darcy trial?

A. I haven't seen any.

Q. By what route would the jury be taken to the courtroom and returned?

A. You mean from the —

Q. From the courthouse to the Doylestown Inn.

A. We went out the back door of the courthouse.

Q. When you went on State Street did the jury go in a body?

A. Yes.

Q. And on which side of State Street would you walk?

A. On the left side going —

Q. Would it be on the side on which the Doylestown Inn is located or the side —

A. Where the Doylestown Inn is located.

Q. Was that true on all occasions?

A. Yes sir.

Q. Did you observe any demonstrations or any groups of persons making any demonstrations on the public streets of Doylestown?

A. I haven't seen any.

Q. Did any persons attempt to speak to any members of the jury during the Darcy trial?

A. No.

Q. Did any members of the jury speak or attempt to speak to any (679) other persons other than the tipstaves or the jurors?

A. No.

Q. Did you know the husband of Anna Reed?

A. No.

BY MR. VAN ARTSDALEN: You may cross-examine.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Now, Mr. Gahman, do you remember an occasion when a ballistics expert appeared on the witness stand, an expert on revolvers and so on?

A. No, I don't remember anymore.

Q. Well, do you know that this expert had a lot of paraphernalia and spread it on a table; do you remember that?

A. Yes. They had some stuff there. I remember that.

Q. You remember that?

A. Yes.

Q. Do you remember that was not the same table that the District Attorney and his assistant were occupying; it was the one next to it?

A. To my recollection, it was on the same table.

Q. You think it was the same table?

A. Where the District Attorney was sitting.

Q. All right. I just want to get one position of yours. The position that Mr. Dannenhower occupied, as I understand, was here; I am pointing to it?

A. Yes.

Q. Which is the fifth chair in the front row in front of the railing, is that right?

A. Yes.

(680) Q. Now the position you occupied was to his right—or was it to his left?

A. To my left.

Q. Then it would be to his left as he was seated—as Dannenhower would be seated, it would be to his left?

A. To the left of Mr. Dannenhower.

Q. It would be over in here this way?

A. Approximately in here.

Q. Approximately in here. You are pointing to the second chair of the second row of seats from the left, and would be back of —

A. About the 11th.

Q. About the 11th juror —

A. Between the 11th and 12th juror there.

Q. I see. Between the 11th and 12th juror there. Would there be an alternate between you and the 11th and 12th juror?

A. No, the alternates were back here, right back here.

Q. Was your chair on the same level as the chairs of the jurors?

A. Mine was on the same level.

Q. By the way, how tall are you?

A. About five feet.

Q. Mr. Gahman, you said that when you were sworn as a juror—a tipstaff, rather, it was your duty to go out and get the jurors and bring them in one by one?

A. They called the jurors and I opened the door and gave the number to the fellow outside and he brought the juror up to the door again.

Q. I see. And then he was examined?

A. Yes sir.

Q. And on how many occasions did you call the juror after you (681) sworn? How many times did you call a number, let's say?

A. I don't remember that.

Q. About? Was it more than once?

A. If I remember right, I done that right along until the jury was filled; just opened the door and called the number of the juror and brought him in.

Q. You mean from the beginning to the selection of the jury?

A. If I remember right.

Q. Do you know that on Tuesday afternoon —

BY MR. MARGIOTTI: If Your Honor please, I am reading from Page 272 of the record.

—the Court announced:

“Mrs. Van Sant and Mr. Gahman are the two additional tipstaves * * *”

Then in parentheses appear the words:

“ * * * (Mrs. Van Sant and Mr. Gahman sworn.) ”

And then the very next thing that occurs is by

"THE COURT: Members of the jury, in addition to what I have told you as to the purpose of your visiting this place, I say to you that you will be in charge of these tipstaves and * * *."

Then they went out to see the scene. You went out to visit the scene?

A. Yes.

Q. Weren't you sworn before you went out to the scene?

A. I really don't remember anymore.

Q. All right; that is satisfactory.

BY JUDGE MURPHY: (682) Let me get counsel's position. Is it your contention a tipstaff, all of these tipstaves, were necessarily sworn on the 8th? They were working as regular tipstaves in the courtroom and they are not placed in charge of the jury as such until they are sworn. The first one that was sworn was Mr. Darnenhower. Then, as we remember it, the next one that was sworn was Mrs. Gwinner, and then later on there were two others sworn. So there were four altogether. But the second two were not sworn until the jury was completed. But that does not preclude them working as tipstaves.

BY MR. MARGIOTTI: I think you are right. It does not preclude them working as tipstaves. But the Court said:

"Mrs. Van Sant and Mr. Gahman are the two additional tipstaves."

Then they are sworn and the jury sent out.

The only reason I am calling it to your attention is the question —

BY JUDGE MURPHY: He says all he is doing is when they call out the names he is acting as tipstaff when he opens the door and calls "Juror 78". He comes down. That is all he is doing. When the jury is selected he is sworn as the officer in charge of the jury.

BY MR. MARGIOTTI: All I know is what is in the record. I am using the record Page 272. If that bears out my contention, I am right. If it doesn't, I am wrong.

(683) BY JUDGE MURPHY: Court is clear. Go ahead. You say you have been a tipstaff for twenty years?

BY THE WITNESS: Yes sir.

BY JUDGE MURPHY: In that courtroom what happens if you see people reading newspapers while a trial is on?

BY THE WITNESS: We will tell them not to read in the courtroom.

BY JUDGE MURPHY: Also in that courtroom what is the practice when you see people reading magazines?

BY THE WITNESS: We tell them not to read in the courtroom.

BY JUDGE MURPHY: Was there any change in that practice during the Darcy trial?

BY THE WITNESS: No sir.

BY MR. MARGIOTTI:

Q. Does that mean that people was not reading news-

papers or had magazines during the Darcy trial because you had such a rule?

A. I haven't seen any.

Q. That doesn't mean that they did not have them; they could have had them?

BY MR. VAN ARTSDALEN: I object.

BY THE WITNESS:

(684) A. They might have had them but I didn't see any.

BY JUDGE MURPHY: We will permit it.

BY MR. MARGIOTTI: That is all.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

CORPORAL HAROLD DANDO, called on behalf of the Respondent, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Corporal, where do you live?

A. Doylestown, Pennsylvania.

Q. What is your occupation?

A. I am a State Policeman.

Q. What is your rank in the State Police?

A. Corporal.

Q. What are your general duties as Corporal in the State Police?

A. I am in charge of the State Police at Doylestown, Pennsylvania.

Q. What was your occupation on June 7, 1948?

A. I was requested —

Q. Before we get to that, Corporal, what was your official position at that time, your occupation?

A. State Policeman at Doylestown.

Q. Whether or not you were also a Corporal at that time?

A. Yes sir.

Q. Where was the particular Doylestown Barracks that you were attached to located at that time?

A. Danboro.

Q. How far is that from the Borough of Doylestown?

A. Four miles.

Q. Now, did you have any official participation in the Darcy (685) trial?

A. I did.

Q. Will you tell us, please, what that was?

A. The Sheriff's office requested assistance to transfer Darcy from the Bucks County Prison to the Bucks County Courthouse during the course of the trial.

Q. All right, sir. What participation did you have in that?

A. I took a member of the barracks from the substation each morning and I arrived at the County Prison about quarter of ten; Darcy was in civilian clothes ready to go in his cell and they would bring him out and I would have him handcuffed to either a State Policeman or a Deputy

Corp. Harold Dando—Direct

Sheriff. We would leave the Bucks County Prison in an automobile that was parked outside and go directly north on Pine Street to the rear yard of the Bucks County Courthouse —

Q. How far is it from the Bucks County Courthouse to the Bucks County Prison?

A. 3/10 of a mile.

Q. How many blocks is it approximately?

A. I would say approximately five.

Q. All right; go ahead.

A. When we arrived in the rear of the Buck County Courthouse we would take Mr. Darcy from the car and go in through the rear door into a corridor and take the handcuffs off him there and then take him into the main courtroom and seat him in back of the defense table.

Q. Will you point out on "Relator's Exhibit No. 135" where it was you would seat the defendant when he was brought in?

A. He would be put in the second or third chair.

Q. You are pointing to the second or third chair to the right of the main corridor immediately in front of the railing separating (686) the spectators benches from the main floor of the courtroom, is that right?

A. That is true.

Q. And was this procedure followed on every day of the trial?

A. All through the trial, sir.

Q. Were you in uniform?

A. Never.

Q. What about the other policeman that you would take along?

A. He was in civilian clothes.

Q. Was it always the same State Policeman you took along?

A. No. I took different members of my station along with me. I went everyday but I took a different Trooper with me.

Q. What, if anything, can you tell us about persons in uniform in the courtroom?

A. I never seen a uniformed State Policeman in the courtroom.

Q. What about any other police?

A. I never seen any other uniformed policemen.

Q. Were you there in the courtroom throughout all times during the Darcy trial that Court was in session?

A. No sir, I wouldn't say I was there at all times. I would say I was there 90% of the time. I probably would get a call to leave and answer the phone on one or two occasions.

Q. Were you always in the same car with Mr. Darcy when he was brought to the courthouse?

A. Yes sir.

Q. What about leaving the courtroom? Explain that procedure.

A. Well, at the noon session when Court would adjourn we would take Mr. Darcy back to the prison and he would have his dinner. I would go home and eat and I would go back to the prison and get Mr. Darcy and take him back for the afternoon session. Then (687) when Court adjourned at night I would take him back to the prison.

Q. At any time throughout the course of that trial were there any crowds around the defendant when you took him from or into the courtroom?

A. No sir.

Q. Did you hear or observe any persons make any statements in reference to the case while you were conducting the defendant back and forth from the courtroom to the jail?

A. No sir.

Corp. Harold Dando: Direct

Q. Did you hear any threats being made of any sort?

A. No sir.

Q. Were there—will you state whether you observed any demonstrations on the streets of Doylestown?

A. No, sir.

Q. Were there any persons gathered around the Bucks County Prison on any occasion either when you took Mr. Darcy back to the prison or brought him from the prison?

A. No sir, there was not.

Q. Was there ever any difficulty driving the automobile from the Bucks County Prison to the Bucks County Court-house or from the Bucks County Courthouse to the Bucks County Prison?

A. No sir.

Q. Do you recall whether or not the defendant, David Grey, ever said anything to you relative to his trial?

A. We never discussed the trial.

Q. Did he ever make any complaint to you about receiving an unfair trial?

BY MR. MARGIOTTE (688): We object, being negative testimony.

BY JUDGE MURPHY: It may or may not be. It may be very affirmative. But it isn't what we are here for. Is it?

BY MR. VAN ARTSDALEN: I will withdraw the question.

BY JUDGE MURPHY: All right.

BY MR. VAN ARTSDALEN:

Q. Were you armed at the time of conducting the defendant back and forth?

A. Yes sir.

Q. Where did you keep your arms?

A. In my back pocket. I had a holster in the back pocket.

Q. Was it visible or was it—was it or was it not visible?

A. It wasn't visible.

Q. Do you recall the location of the various tables in and about the courtroom at the time of the trial?

A. I have a recollection, yes sir.

Q. Corporal, I want to show you "Relator's Exhibits Nos. 118, 119, 120, and 121," and ask you whether they accurately depict the present conditions in the Bucks County Court-house?

A. Yes sir.

Q. Do you observe in those pictures any changes from the conditions as existing at the time of the Darcy trial?

A. The third chair on the bench is all—is the only change I see.

Q. What about the location of the tables that are indicated in the photographs?

A. They are the same places they were during the trial.

Q. Did you know Judge Boyer at the time of the trial, sir?

(689) A. Yes sir.

Q. Did you see or observe Judge Boyer in the courtroom during the course of the trial?

A. Yes sir.

Q. Will you tell us on what occasion?

A. Well, he would come out with Judge Keller in the morning and they would take their seats at the bench and discuss some business and then he would leave.

Q. When you say "he," to whom are you referring?

A. Judge Boyer.

Q. All right. I call your attention to the evening session Friday evening, June 11. Were you present in Court on that occasion?

Corp. Harold Dando—Direct

A. I was, sir.

Q. Do you recall seeing Judge Boyer in the courtroom on that occasion?

A. No sir.

Q. Do you have any recollection as to where Mr. Biester was seated during the evening of Friday?

A. No sir.

Q. Do you recall the charge of the Court, that phase of the case?

A. No sir.

Q. And where did you sit during the trial of the case, Corporal?

A. To the rear of the defense table.

Q. Would you indicate on "Relator's Exhibit No. 135," please?

A. When we would bring Mr. Darcy into the courtroom he would be seated in one of these three chairs here —

Q. You are indicating three chairs immediately in front of the —

A. Spectators.

Q. —spectators —

A. That is right.

(690) Q. —on the first section to the right as you enter the main courtroom?

A. That is right. And he would remain in one of those three chairs until the trial started. Then I would move him up to the seat at the defense table.

Q. And where would you sit?

A. I would be to the rear of him in one of these chairs here.

BY MR. MARGIOTTI: Which seats?

BY THE WITNESS: Well, anyone of these four or five. During the whole course of the trial I would be in any one

of them. I would be to the rear of Darcy who would be sitting at the defense table.

BY MR. VAN ARTSDALEN:

Q. Now, Corporal, do you have any recollection as to the benches immediately to the rear of where you were seated?

A. That was the spectators right in back in this row of seats back this way, the spectators.

Q. At any time throughout the course of that trial do you recall hearing any statement made by the spectators in the courtroom?

A. No sir.

Q. Were there any outbursts in the courtroom?

A. No sir.

Q. Do you recall any times when the Court called for order in the courtroom?

A. No sir.

Q. Or any of the Court officials?

A. No sir.

Q. Did you see any newspapers or magazines in the courtroom?

(691) A. No sir.

Q. How long have you been a Pennsylvania State Policeman, Corporal?

A. Twenty-three years.

Q. How long have you been in charge of the Doylestown Barracks?

A. Eleven years.

Q. Did you observe anything unusual at all throughout the course of this trial?

A. No sir.

Q. Did you observe anything unusual outside of the courtroom throughout the course of this trial?

A. No sir.

Q. Corporal, as a Pennsylvania State Policeman have you had any official connection with any other murder trials?

A. Yes sir.

Q. Can you give the Court any estimate of the number?

A. Oh, I will say one-half dozen.

BY MR. VAN ARTSDALEN: That is all.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Corporal, in taking the defendant back and forth to the Doylestown Jail—to the courthouse, that was in an automobile?

A. Yes sir.

Q. And, of course, you weren't stopping along the road to talk to people or have people talk to you?

A. That is right, sir.

Q. Now then, you have testified that on occasions you saw Judge Boyer come on to the bench, is that right?

A. Yes sir.

Q. And do you remember how long the Darcy trial lasted—your (692) recollection, how many days it lasted?

A. Why, I think the Darcy trial lasted about seven days.

Q. And during those seven days did Judge Boyer come on the bench every day?

A. I don't know, sir.

Q. Do you know what portion of those seven days he came on the bench?

A. No sir.

Q. Would you know how long he stayed on the bench when he did come on the bench?

A. No sir.

Q. Were you in the courtroom at a time when there was a sidebar conference between the Judges and the attorneys Mr. Achey and the District Attorney?

A. I don't remember.

Q. You don't remember that?

A. No sir.

BY MR. MARGIOTTI: Sergeant, I think that is all—
Corporal Maybe you ought to be a Sergeant.

(Witness excused.)

MR. FELIX R. GOWAN, called and sworn on behalf of the Respondent, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION

BY MR. VAN ARTSDALEN:

Q. Mr. Gowan, where do you live?

A. Doylestown.

Q. What is your address?

A. 118 East Oakland Avenue.

Q. What is your age?

(693) A. Fifty-one.

Q. What is your occupation?

A. Chief of Police.

Q. Of what district?

A. Doylestown, Bucks County.

Felix R. Gowan--Direct

Q. How long have you been Chief of Police of Doylestown Borough?

A. Since April 1, 1941.

Q. What was your occupation prior to that time?

A. I was with the Pennsylvania State Police.

Q. How many years had you been with the Pennsylvania State Police?

A. Fifteen.

Q. Were you Chief of Police of Doylestown during May and June 1948?

A. Yes sir, I was.

Q. Were you Chief of Police in Doylestown Borough also from December 1, 1947?

A. Yes sir, I was. I have been Chief since 1941.

Q. Now then, Mr. Gowan, do you recall hearing about the killing at Feasterville?

A. Yes sir, I do.

Q. From the time of that occurrence up to and through the completion of the Darcy trial did you observe any demonstrations in the Borough of Doylestown in relation to this case?

A. No sir, I did not.

Q. And were you in Doylestown constantly throughout that period of time?

A. Yes sir, I was.

Q. In your official capacity as Chief of Police were any complaints made to you concerning any demonstrations in the (694) Borough of Doylestown?

A. No sir, there was not.

Q. During the Darcy trial what, if any, things did you notice in and about Doylestown?

A. Nothing unusual.

Q. What about the number of persons in Doylestown?

A. The only increase or the only noticeable increase in

persons was at noon-time when Court would adjourn. It would be like any other term of court. There would be more people coming down from the courthouse than there would when the court was not in session. That was only normal. Every Court session there would be some more people coming down.

Q. Did you have any traffic problems during that week?

A. No sir, we did not.

Q. Did you make any arrests during that week?

A. No sir.

Q. During that week for any disorderly conduct?

A. No sir, we did not.

Q. Did you observe any large crowds in and around the courthouse?

A. No sir.

Q. Were you up around the courthouse on any occasion?

A. I got up a couple of times a day; passed it on occasion every day.

Q. Did you assign any extra officers because of this case?

A. No sir.

Q. Was there any request by any public official for any particular police precautions?

A. No sir, there was not.

Q. Was there any request by any person?

A. No sir, there was not.

(695) Q. Did you attend any portion of the Darcy trial?

A. No sir, I did not.

Q. Did the same conditions exist you have testified to in the week prior to the Darcy trial?

A. I don't—things have been normal around there. If Court was in session a week prior to the trial then there were some more people coming down at lunch time because where I am stationed getting children across people coming from the courthouse and they want to go to eat anywhere in town they must come across that intersection.

Q. What intersection is that?

A. Case and Monument.

Q. How far is that from the courthouse?

A. I would say one square.

Q. And during the week of the Darcy trial did you constantly stand on duty there at any portions of the day?

A. Yes sir.

Q. What times of day?

A. Mostly during the noon hour from 11:30 to 1:00. That is when the children come across, and a man there all the time.

BY MR. VAN ARTSDALEN: You may cross-examine.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Chief, did you assign any members of your force to the maintenance of order in the courthouse during the Darcy trial?

A. No sir.

Q. Do you know of any police officers having been so assigned?

A. No, I do not.

Q. You are still Chief?

(696) A. Yes sir.

BY MR. MARGIOTTI: Thank you. We are through.

(Witness excused.)

MR. CLARENCE IRWIN, called and sworn on behalf of the Respondent, on direct- and cross-examination, testified as follows:

DIRECT-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Irwin, what is your occupation?

A. County Detective of Bucks County.

Q. Where do you live?

A. Doylestown, Pennsylvania.

Q. How long have you been a resident of Doylestown?

A. Thirty-three years.

Q. How long have you been one of the County Detectives of Bucks County?

A. Since September 1, 1952.

Q. What was your occupation from December 1, 1947 through June 15, 1948?

A. I was Assistant Chief of Police of Doylestown Borough.

Q. How long had you been prior to December 1, 1947 Assistant Chief of Police or on the police force of Doylestown?

A. I became a member of the Doylestown Police Force on January 1, 1942.

Q. Do you know how many persons were on the Doylestown Borough Police Force on December 1, 1947?

A. I believe there were six.

Q. Was there any increase in that number between that time and June 15, 1948?

(697) A. I don't believe so.

Q. Mr. Irwin, were you on duty as Assistant Chief of

Police during the week commencing June 7, 1948 through June 15, 1948?

A. I was. I worked all night work.

Q. You were on only night duty, is that correct?

A. That is right.

Q. During the period of time that I have referred to, were there any unusual occurrences that occurred in the Borough of Doylestown that came to your attention?

A. No sir.

Q. Were there any disturbances of any sort?

A. No sir.

Did you make any arrests for any disorderly conduct?

A. No sir.

Q. Now, Mr. Irwin, did you attend any of the Darcy trial?

A. I attended several sessions in the afternoon.

Q. And will you tell us, please, what you saw and observed when you attended those sessions?

A. Nothing out of the ordinary of any other Court session.

Q. Let me ask you this first: Were you in uniform or not in uniform?

A. No, I went on my own as a spectator.

Q. Were you requested by any person to attend?

A. No sir.

Q. All right. Will you tell us, please, what you saw and observed?

A. Nothing unusual.

Q. What about the number of persons that were in the courtroom on the occasions that you went in?

A. Well, at different times I attended in the afternoon at no time that the courtroom was full.

Q. Did you observe any disturbances in the courtroom?

(698) A. No sir.

Q. On how long a period of time were you in the courtroom during the Darcy trial?

A. Sometimes it would be one hour; sometimes maybe a little longer; maybe two hours.

Q. Do you know what days you were there?

A. I don't remember the days, no sir.

Q. Do you know how many days you were there?

A. I would guess oh, three ~~days~~—three afternoons.

Q. On any —

BY MR. MARGIOTTI: I ask that that answer be stricken because it is a guess.

BY JUDGE MURPHY: What is your best judgment as to the number of days you were there?

BY THE WITNESS: Three afternoons, to the best of my judgment.

BY MR. VAN ARTSDALEN:

Q. On any of those occasions do you have any recollection of Judge Boyer being in the courtroom?

A. No, I don't.

Q. You knew Judge Boyer at that time?

A. Yes, I did.

Q. Did you know Judge Keller at that time?

A. Yes, I did.

Q. On the occasions that you were in the courtroom did you see and observe any newspapers or magazines by any one in the courtroom?

A. No, I did not.

Q. Where would you sit when you came into the courtroom, Mr. (699) Irwin?

A. I generally sat right as you entered the courtroom, either to the right or left of the center aisle.

Q. On one of the benches to the rear?

A. One of the benches to the rear.

Q. At that time did you know Joseph Darcy?

A. I did not.

Q. What were the hours of your duty in the Borough of Doylestown during that period?

A. The hours of duty were from 10:00 o'clock at night to 8:00 o'clock in the morning.

Q. Do you know what hours the Chief of Police was on?

A. 8:00 o'clock in the morning to 4:00 o'clock in the afternoon.

Q. Who was on duty from 4:00 o'clock in the afternoon until the time you went on?

A. Oh, there would be other policemen on at that time.

Q. Did you as Assistant Chief of Police receive any complaints from any persons about any disturbances in and about Doylestown?

A. No sir.

Q. Were any complaints made to you by any police officers?

A. No sir.

Q. Did you receive complaints from any person?

A. No sir.

BY MR. VAN ARTSDALEN: You may cross-examine.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Irwin, you worked from 10:00 o'clock at night to 8:00 o'clock in the morning?

A. That is right, sir.

Q. And when would you get your sleep?

(700) A. When I got home in the morning.

Q. I assume so. What time would you go to bed usually?

A. Well, anywhere from 8:30—9:00—10:00 o'clock.

Q. And what time would you usually get up?

A. Well, that depended on what I had to do that day.

Q. Well, on an average, usually when would you get up?

A. Sometimes I wouldn't go to bed until maybe 11:00 or 12:00 o'clock.

Q. What was your average arising time?

A. Oh, I would say 1:00 o'clock in the afternoon.

Q. 1:00 o'clock in the afternoon. Now you said you went to the courthouse?

A. That is right.

Q. Who went with you, if anybody?

A. Myself.

Q. How long would you stay?

A. An hour, an hour and a half.

Q. What time would you get there?

A. Oh, 1:30; sometimes 2:00 o'clock.

Q. And these sessions were all in the afternoon?

A. All afternoon sessions; that is right.

Q. As I understood your testimony, although you entered the courthouse you hold no recollection on those three occasions of seeing Judge Boyer?

A. No sir.

Q. You don't mean by your answer that he wasn't there; you just don't remember whether he was or he wasn't there?

A. On my recollection, the Court was in session when I would arrive and I did not notice Judge Boyer.

Q. Anywhere?

(701) A. Anywhere, no sir.

Q. Do you recall definitely you didn't notice him or don't you know whether you noticed him?

A. I just don't recall noticing Judge Boyer.

Q. I see. You usually sat in the back?

A. Yes, somewhere to the rear of the courtroom.

Q. In the last row?

A. I wouldn't say the last row.

Q. Near there somewhere?

A. Within the last four or five rows to the back.

Q. Either to the left or right, wherever you could get a seat?

A. Yes sir.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

BY JUDGE MURPHY: It is now 3:24. We will take the usual ten-minute recess.

(Recess.)

(During the recess the Grand Jury made a report to the Court.)

(Court resumes after the Grand Jury made a report to the Court with all parties, including the Relator, David Darcy, present in Court.)

BY JUDGE MURPHY: Let the record note that during the time the Grand Jury was called, the defendant was excused in charge of the bailiffs in the jury room and did not return until that business had been completed and the Grand Jury had departed. Isn't that what happened?

BY MR. KAUFMAN: That is what happened.

Atty. Willard S. Curtin—Direct

BY JUDGE MURPHY: (702) We have noted on the record the disappearance or the absence of the defendant during the proceeding that just occurred and his return to the courtroom—the Relator.

BY MR. MARGIOTTI: And in which he had no part.

ATTORNEY WILLARD S. CURTIN, called and sworn on behalf of the Respondent, on direct and cross-examination, testified as follows:

DIRECT EXAMINATION:

BY MR. VAN ARTSDALEN:

Q. Mr. Curtin, where do you live?

A. Morrisville, Bucks County.

Q. What is your present occupation?

A. I am an Attorney.

Q. Where is your office?

A. In Morrisville, Pennsylvania.

Q. What kind of practice do you conduct?

A. The general practice of law.

Q. What, if any, official position did you have with the County of Bucks on December 1, 1947?

A. At that time I was Assistant District Attorney of Bucks County.

Q. When were you first appointed Assistant District Attorney of Bucks County?

A. In January of 1938.

Q. Were you an Assistant District Attorney of Bucks County from then until sometime after December 1, 1947?

Atty. Willard S. Curtin—Direct

A. Yes sir, until September—either August or September 1949.

Q. Did you obtain any official position with the County of Bucks after that?

A. I was then the District Attorney.

Q. Were you appointed District Attorney at that time?

(703) A. Yes sir, I was appointed to fill out the unexpired term of Edward G. Biester and elected to the office at the conclusion of Mr. Biester's term.

Q. When were you elected to the office of District Attorney?

A. I think, sir, it was in November 1949.

Q. Did you continue as District Attorney for a full term?

A. Yes sir.

Q. Did you run for re-election?

A. No, I did not.

Q. Now, Mr. Curtin, were you present in Court during all of the sessions of the trial of the case of Commonwealth vs. David Darcy?

A. Yes, I was.

Q. Will you tell us, please, in what capacity?

A. I assisted the then District Attorney Edward G. Biester in the trial of the case. I believe that I aided in the examination of the jurors in the voir dire and aided Judge Bister throughout the rest of the trial.

Q. Were you present throughout the Foster-Zietz trial?

A. Yes, I was.

Q. Will you state whether or not that took place prior to the Darcy trial?

A. It did.

BY JUDGE MURPHY: All right, sir.

BY MR. VAN ARTSDALEN:

Q. Will you state whether or not you examined the prospective jurors on the voir dire examination?

A. In which trial are you speaking of —

Q. In the Darcy trial.

(704) A. I did; some of them, sir.

Q. All right. Do you know whether any of the jurors—prospective jurors—called on voir dire in the case of Commonwealth vs. David Darcy—do you know whether any of them were in Court during any of the sessions of the Foster-Zietz trial?

A. I would say—it is very/unlikely —

BY MR. MARGIOTTI: We ask that the answer be stricken from the record.

BY JUDGE MURPHY: We will permit it to stand for the time being. We will permit thorough examination on it. If it isn't added to and thoroughly explained, we will strike it. We will permit it to stand if the witness desires to explain or counsel to amplify. If they don't, a motion to strike.

BY MR. VAN ARTSDALEN:

Q. Mr. Curtin, do you know whether any of the prospective jurors that were called in voir dire in the case of Commonwealth vs. David Darcy were present in Court during the Foster-Zietz trial as a result of the venire issued?

A. They were not —

BY MR. MARGIOTTI: We object for the reason the record is the best evidence.

BY JUDGE MURPHY: Now, as I understand it, the question that was asked of the witness was were any of

Atty. Willard S. Curtin Direct

the jurors who were examined in the Darcy trial included in the venire directed to produce veniremen for the Foster-Zietz trial; and if they were in that venire, were any in Court during the Foster-Zietz trial?

That is your question, sir. Is that what you mean?

(705) BY MR. VAN ARTSDALEN: No sir. I will withdraw the question.

BY JUDGE MURPHY: Reframe the question.

BY MR. VAN ARTSDALEN:

Q. Mr. Curtin, do you know on what day the jurors that were called on for the voir dire of the David Darcy case first appeared in Court?

A. June 7, 1948.

Q. Now, Mr. Curtin, will you tell us, please

BY MR. MARGIOTTI: Your Honor, I move the answer be stricken for the reason that the record is the best evidence.

BY JUDGE MURPHY: No; the record does not help us much. You have challenged the record, and we are now trying to find out what the fact was. You say the record is not the best evidence, it is wrong, as I understand it, in two particulars. The venire went out on a certain date to bring in certain jurors to Zietz-Foster. There was another venire to bring in certain jurors to Darcy. Then the question came up what date did they appear. We suggested to counsel that it may be if warrants were produced it would show when they came. They haven't appeared as yet. The question is did they appear, if ever? Your objection is overruled. Did they appear, if ever, and if so, when?

BY MR. VAN ARTSDALEN:

Q. Mr. Curtin, will you tell us, please, what you can recall as to the number of persons —

BY JUDGE MURPHY: The Court suggested that advisability, and certainly we are not trying to direct in this case, but we are seeking (706) the truth. We suggested at the opening the advisability of finding out when these jurors appeared by warrants for their pay. Have you any evidence to offer on that?

BY MR. VAN ARTSDALEN: We are going to call one of the employees from the Treasurer's office which we believe and hope will be able to clear up that situation.

BY JUDGE MURPHY: We will take this subject to the other evidence to follow.

Read the partial question, Mr. Reporter.

(Partial question read by the Reporter.)

BY MR. VAN ARTSDALEN: —present in the courtroom during the various sessions of the Darcy trial?

A. At no time was the courtroom one-half full. The greatest number, I would say, would be there during one evening session which, to my recollection, was on a Friday night, and at that time it did not one-half fill the courtroom, which is a very large courtroom.

Q. How many spectators were there during the calling of the jurors on voir dire?

A. Very few; I would say not over fifty-sixty.

Q. Mr. Curtin, will you tell us, please, how the jury came in and retired from the courtroom?

Atty. Willard S. Curtin—Direct

A. You are speaking, sir, of the full panel or the twelve and two alternates that were chosen in this case —

Q. I am speaking of the jurors that were ultimately sworn in this case.

(707) A. Yes, sir. They would come into the courtroom every morning at just about 10:00 o'clock. It was the practice they would be brought to the courtroom by the persons having them in charge very shortly before 10:00 o'clock—within a few minutes of 10:00 o'clock; they would then be kept in a room, a small room which is off the courtroom, they would be in that room being covered with tipstaves; and at 10:00 o'clock they would be brought into the main courtroom by the persons having them in charge and they would take their seats in the jury box. They would come in through the door which as you face the bar and the bench is on the left—right-hand side.

Q. Do you recall whether there were any disturbances in the courtroom at any time in the trial of David Darcy?

A. There were not.

Q. Do you recall whether the courtroom was at any time cleared by order of the Court?

A. It was not.

Q. What, if anything, can you tell us as to the general conduct of the trial?

A. It was an orderly trial, differed in no way than any of the other trials that we had there. There was no unusual disturbance or nothing unusual occurred.

Q. Who examined the witnesses in the case for the Commonwealth?

A. The then District Attorney—presently Judge Biester, then District Attorney Biester.

Q. Do you recall whether you did any of the examination of the witnesses?

A. To the best of my recollection, I did not.

Q. Do you recall whether or not a statement was introduced into evidence?

(708) A. There was.

Q. And do you recall whether or not that was read to the jury?

A. It was.

Q. Do you know by whom?

A. I believe I read the statement to the jury.

Q. Now, what can you tell us, Mr. Curtin, concerning the presence of Judge Boyer in the courtroom during the course of the Darcy trial?

A. Well, Judge Boyer would come into Court with Judge Keller when Court was opened at 10:00 o'clock in the morning and they would both take their seat at the bench, and they would then have—the Court would then be officially opened. They would have miscellaneous business, which would take a few minutes. Then there was other criminal work which was being done that same time, and Judge Boyer, I believe, for the first two days—my recollection is for two days he withdrew from the bench when the miscellaneous business had been completed and withdrew to another courtroom where he had other criminal matters—

Q. Who represented the Commonwealth in those other criminal matters, if you know?

A. It was the practice and was on that occasion a situation where I would request any attorney that happened to be free and in Court to represent the Commonwealth for those guilty pleas, those guilty pleas he was handling.

Q. How many Assistant District Attorneys were there at the time of the trial?

A. Just one; myself.

Q. Do you recall seeing Judge Boyer sitting in the courtroom on any occasion other than on the bench?

Atty. Willard S. Curtin—Direct

BY MR. MARGIOTTI: (709) We object until the witness is given an opportunity to finish his first answer. He started to tell about Judge Boyer being in there for two sessions and then the District Attorney is asking a number of other questions. He hasn't finished that first question.

BY JUDGE MURPHY: Had you completed the answer?

BY THE WITNESS: No sir.

BY JUDGE MURPHY: Then you complete your answer.

BY THE WITNESS: There was one occasion when Judge Boyer was on the bench in the very early stages of the trial, as I recall, after the jury had been selected, and there was a conference at sidebar and I understand that—although I did not go to sidebar, I understood there was some objection made by Mr. Achey to Judge Boyer and Judge Boyer, to my recollection, then withdrew. He did not go on the bench again during the trial. There were two or three occasions when I noticed him seated in the course of the trial at a chair just inside of the courtroom by the doorway which led from the courtroom to the Judge's Chambers.

BY MR. VAN ARTSDALEN:

Q. Referring to "Relator's Exhibit No. 135," will you indicate where this chair is that you have just referred to?

A. Yes sir. It is a—there were two chairs that Judge Boyer used, as I recall it. One was the chair immediately inside the courtroom. That is immediately inside the courtroom from the door (710) to his office, which would

be the very first chair located on the right-hand side of this plan —

Q. That is on the right-hand side as the Court would sit on the bench; is that correct?

A. Yes sir.

On another occasion I noticed Judge Boyer seated in Chair No. 4, which would be the first chair in front of the railing in front of the spectators benches.

Q. And you are pointing to a chair that has been marked "Judge Boyer," is that correct?

A. That is right, sir.

Q. Mr. Curtin, I want to refer you to "Relator's Exhibits Nos. 100—strike that. I refer you, Mr. Curtin to "Relator's Exhibits Nos. 118, 119, 120, and 121," and ask you whether you can recognize those exhibits, please?

A. Yes sir, I represent—I recognize the scene depicted on those four exhibits.

Q. And do they accurately depict the present conditions existing in the Bucks County Courthouse?

A. They do.

Q. Will you tell us whether or not there are any changes that you observe in those photographs that were not existent at the time of the Darcy trial?

A. There is one change that I would notice, Mr. Van Artsdanel. In "No. 118" it shows three chairs behind the Judges bench. At the time of the trial there were only two.

Q. Will you state how many Judges there were in Bucks County at that time?

A. Two.

Q. Now, Mr. Curtin, referring again to those exhibits, there are certain tables and chairs indicated in those pictures, is that (711) correct, sir?

A. That is correct.

Q. Are you able to state whether or not there are any changes between the location of the tables and chairs shown in those pictures from the conditions existing at the time of the Darcy trial?

A. As they are represented —

BY JUDGE MURPHY: Now the Grand Jury will please retire until called. We don't want them in here while the defendant is in this room. I don't want to have any misunderstanding.

If you will have the prisoner retire, we will have the Grand Jury report.

Has the prisoner been retired? Will someone answer my question?

BY MR. MARGIOTTI: Yes, Your Honor.

(The Relator, David Darcy, retires from the room while the Grand Jury makes a report to the Court.)

BY MR. MARGIOTTI. And the witness has been retired too.

(Grand Jury makes a report to the Court.)

(The Relator, David Darcy, is brought back into the Court.)

BY JUDGE MURPHY: Let the record note that the Grand Jury has retired from the courtroom whereupon the defendant was then called back into the courtroom and the witness resumed the stand.

May we say to counsel for the Relator and counsel for the Commonwealth that there has been a death in the family of the Court Reporter and he will not be available tomorrow.

Atty. Willard S. Curtin—Direct

row, but we will have another Court Reporter in his stead, and if the problem comes up referring back to testimony, the (712) Court has ample notes, I think, and if not, we will meet that eventuality when it comes.

Read the last question, Mr. Reporter.

(Last question read by the Reporter.)

• BY THE WITNESS:

A. The tables as they are shown in these four exhibits are exactly as they were during the time of the Darcy trial; no changes.

BY MR. VAN ARTSDALEN:

Q. Mr. Curtin, were you present during the Friday evening session?

A. Yes, I was.

Q. Do you remember or have any recollection as to what was done with the Commonwealth's exhibits when they were produced into evidence?

A. Yes sir. Prior to the exhibits being produced into the evidence they were kept in a large cardboard box behind District Attorney Biester and myself. After exhibit numbers had been attached to them they were replaced in that cardboard box. As they were offered they were from that point on either on the front of the Clerk's bench or at various times they would be at the end of the bench in front of the bar in the immediate vicinity of the Court Stenographer.

Q. Will you tell us, please, where the Court Stenographer sat in the trial of this case? Can you refer to "Relator's Exhibit No. 135," please?

• A. Yes sir. Referring to "Relator's Exhibit No. 135," the Court Stenographer sat at the first chair as you look from

Atty. Willard S. Curtin—Direct

the bench towards the back of the courtroom, the very first chair at the bench in front on the left-hand side, which would be the chair immediately—well, diagonally in front of where the witness sat.

(713). Q. How far was the Commonwealth's table from the nearest juror?

A. The front of the Commonwealth's table would be about four to five feet from the front of the nearest juror—the front of the chair of the nearest juror.

Q. And how far was it from the Commonwealth's table to the—strike that. Was there a table to the rear of the Commonwealth's table?

A. There was.

Q. And what was the purpose of that table?

A. That was a table where the reporters constantly sat and where they were seated during this trial when they were there.

Q. What about members of the bar not engaged in the trial of the case, where would they sit?

A. They sat, sir, on the row of chairs in front of the railing, particularly those chairs where were as you face towards the back of the courtroom; those chairs, which would be on the right-hand side of the main aisle, and also in the chairs which were placed in front of the reporters table, and then sometimes they would be in the chairs in back of the reporters table if there were no reporters seated at the table.

Q. Can you give us any estimate of the distance between the Commonwealth's table and the table which, I believe, you have referred to as being used by members of the press?

A. I would say there was at least fifteen feet separating those two tables.

Q. Was there at the time of the Darcy trial?

A. Yes sir. The tables then were exactly the same as they are now.

Q. Mr. Curtin, referring again to "Relator's Exhibit No. 135," can you give us any estimate of the distance between the chair (714) immediately in front of the railing separating the spectators benches from the floor of the main court-room which has been marked as "Judge Boyer—can you give us any estimate of the distance from there to the table which you have referred to as the table used by members of the press?

A. The back of the table used by members of the press would be, I would say, about ten feet in front of the chair which is marked "Judge Boyer."

Q. And were there any chairs intervening during the course of the Darcy trial?

A. Yes, there were chairs in back of the reporters table immediately in back that were used. When you were seated at those chairs you would be at the table.

Q. Mr. Curtin, at any time throughout the trial do you recall seeing any spectators reading or carrying newspapers?

A. I did not.

Q. What about magazines?

A. No newspapers or magazines.

Q. I refer now specifically to "Relator's Exhibit No. 136." Do you recall seeing any copy of "Relator's Exhibit No. 136," or anything similar to that, in the courtroom at any time during the Darcy trial?

A. I did not.

Q. Mr. Curtin, at any time during the course of the trial while the trial was in progress did you observe any outbursts in the courtroom?

A. There were no outbursts.

Q. Did you observe or did you overhear any conversations by any spectators that were seated in the courtroom?

A. During the course of the trial there was no noise from

Atty. Willard S. Curtin—Direct

any of (715) the spectators. Maybe when Court was over as I was leaving the room I may have heard some persons talking among themselves. I have no recollection what they said. It wasn't anything unusual. It was just ordinary conversation.

Q. Now, Mr. Curtin, do you recall where Mr. Bister was seated during the charge of the Court?

A. To the best of my recollection, sir, both Mr. Biester and I were seated in two of the chairs in the first of the two rows of chairs which were immediately in front of the reporters table.

Q. Would those chairs be at the Commonwealth' table?

A. No sir. Immediately to the rear of the Commonwealth's table there are two rows of chairs in front of the reporters table, oh, probably twelve to fifteen feet behind the Commonwealths' table.

Q. Do you recall whether there was anyone sitting at the Commonwealth's table during the charge of the Court?

A. I believe that I went to it for a few minutes but, to the best of my recollection, the Commonwealth's table had no one seated at it during most of Judge Keller's charge.

Q. Do you recall seeing Judge Boyer in the courtroom during the Court's charge?

A. I have no recollection whatsoever of Judge Boyer being in the courtroom during the charge of Judge Keller.

Q. Do you have any recollection of any note having been handed by Judge Boyer to Mr. Biester at anytime during the charge of the Court?

A. I have absolutely no recollection of any note being handed to Judge—to District Attorney Biester at any time during the charge of the Court.

Q. Mr. Curtin, you have stated, I believe, that you observed Judge (716) Boyer on the bench at certain morning sessions. What about afternoon sessions?

A. Sir, to the best of my recollection, when Court reconvened for the afternoon session Judge Boyer did not come on the bench with Judge Keller. It is my recollection he only did that when they opened Court in the morning.

Q. You have stated, I believe, that Judge Boyer retired to another courtroom. Will you describe where that other courtroom was?

A. Yes sir. At that time and at this occasion during this week the courtroom that was used by Judge Boyer was what was called the grand jury room which was on the second floor of the courthouse.

Q. How would you get there from the main courtroom?

A. You would have to leave by one of the doors, exit doors, in the back of the courtroom and take the stairs to the second floor, and the grand jury room is at the top of those stairs.

Q. Mr. Curtin, during the course of the trial where did you eat your lunches, do you recall?

A. I believe I ate most days at the Doylestown Inn.

Q. Do you recall whether that was in the main dining room or in the grill?

A. In the main dining room.

Q. Do you recall on any occasion seeing or observing the jury in the Doylestown Inn, or observing the jury on the streets of Doylestown?

A. I saw the jury in the Doylestown Inn on occasions when I was there for lunch. I have no recollection of seeing them on the streets of Doylestown.

Q. At any time when Court was in recess that you observed the jury, (717) did you observe any persons talk or talking in any way to any members of the jury with the exception of tipstaves and other jurors?

A. None whatever during the recess. Before the recess

Atty. Willard S. Curtin—Direct

was called by the Court the jury would be ordered removed by the Court to a room immediately outside of the courtroom immediately to the rear of the courtroom and in the corridor outside of the back. Then when Court was called then the jury would be called in again by the Court. I could add to that—all those occasions when the jury withdrew was always when Court was in session. Then the Court would reconvene before the jury would be called in again.

Q. Mr. Curtin, how near at any of the times that you have referred to in the Doylestown Inn were you to the jury?

A. At no time was I nearer than sixty to seventy-five feet from the jury. The jury had a table at the far end of the large—very large dining room, and I had a table at the other end of the dining room, which would be at least fifty—sixty—seventy-five feet away, this table being fifty feet at the very least.

Q. Mr. Curtin, have you been here throughout this hearing?

A. No, I just came here this afternoon.

Q. Did you observe any disturbances on the streets of Doylestown of any kind during the week of the Darcy trial?

A. None whatsoever.

Q. Did you observe any crowds milling about outside of the Court?

A. None whatsoever.

Q. Do you know in your official capacity whether there were any special precautions taken to guard against disturbances in the courtroom?

(718) A. There were no such precautions taken.

Q. What, if any, uniformed officers did you observe in the court room during the Darcy trial?

A. The only uniformed officers that I saw would be the

tipstaves. There were State Policemen with the defendant, I believe two, on all occasions; and there were a number of State Policemen who were witnesses who were in the courtroom, but none of them were in uniform on any occasion, to the best of my recollection.

BY MR. VAN ARTSDALEN: You may cross-examine.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Curtin, at that time were the Judges—did the Judges when occupying the bench wear robes—garbed in robes?

A. They did not.

Q. They wear simple civilian clothes?

A. That is right, sir.

Q. You say that during the time of the Darcy trial you ate at the Doylestown Inn; that is for your lunch; is that right?

A. On some of the days, yes sir.

Q. How many days did you eat your lunch there?

A. Probably three; three or four.

Q. Three or four. Did you take any other meals at the Doylestown Inn?

A. During that period, yes. I think on one occasion I took my dinner there on Friday evening.

Q. On Friday evening. Did you take any other meals besides your dinner Friday evening?

A. No others.

Q. Did you go there alone to have your meals at that place?

Atty. Willard S. Curtin—Cross

(719) A. You mean did I walk down by myself or did I seat myself with somebody else when I got there —

Q. Did you have dinner or lunch with somebody else?

A. I believe I did.

Q. With whom?

A. I wouldn't be able to say now who it might have been. It would be a guess. I would have to hazard a guess.

Q. I wouldn't want you to hazard a guess. Was it some Court attendant, some officer?

A. Probably Mr. Russo, the prosecutor.

Q. Who was Mr. Russo?

A. He was the Chief County Detective at that time.

Q. I see. How about Mr. Donnell or the Chief of Police?

A. Neither Mr. Donnell or the Chief of Police ever had lunch at the time I was there.

Q. Did Mr. Biester take lunch?

A. I don't think. I think Judge Biester went home for lunch. He may have been there on one or two occasions. I don't remember.

Q. You recall Mr. Russo. Do you remember any other persons?

A. I have no distinct recollection, Mr. Margiotti. It may have been some of the other witnesses. I wouldn't recall definitely.

Q. I see. At any rate, you kept yourself some distance from the jury?

A. That is right.

Q. But the jury could see you?

A. Well, the jury, to my recollection, seemed to have a pretty good time eating. They didn't pay much attention to us.

Q. They were in a position to see if they looked?

A. If they looked they might have seen us some of the occasions (720) I was there at the other end of the dining room, yes.

BY JUDGE MURPHY: In a town the size of Doylestown did you have any other choice?

BY MR. MARGIOTTI: I am coming to that.

Q. The jury could have seen you; you knew the jury was eating there?

A. Yes.

Q. And you went there?

A. Yes.

Q. Knowing the jury was eating at the Doylestown Inn?

A. Yes sir.

Q. With your witnesses and County Detective?

A. That isn't what I said.

Q. The County Detective and people —

A. Occasionally I was there, yes.

Q. Now there are other eating places, as his Honor has asked —

BY JUDGE MURPHY: I asked if there were.

BY MR. MARGOTTI:

Q. There were at that time?

A. Yes.

Q. Did you eat at those places?

A. On some of the occasions.

Q. On what occasions?

A. It would depend, sir—if I may elaborate on that—how much time I had. I prefer the Doylestown Inn because that is where you get your best food. If I was hurried, I would go to some other place.

(721) Q. And your table in the courtroom you say was about four or five feet from the jury?

Atty. Willard S. Curtin—Cross

A. The front of the table, sir, was about four or five feet from the nearest juror, so that where we were seated was about eight feet from the nearest juror.

Q. Was the table located as it is on "Exhibit No. 135"?

A. Yes sir.

Q. Were there chairs located as those on this exhibit?

A. Yes sir.

Q. Were there three chairs there?

A. There were.

Q. Now what you called the reporters table, is that the one that is between your table and the body of the courtroom?

A. No, you are pointing to the defendant's table there.

Q. Defendant's table, all right. Then the reporters table was here—you said some distance—I think you said about eight feet from the chair marked "Judge Boyer"?

A. About eight feet from the front of the chair marked "Judge Boyer" to the back of the chair behind the reporters table; eight or ten feet.

Q. At that time was there any chair between the table and—say, the chair in front of the benches?

A. Yes sir, just about like they are right there. That has been standard equipment, as far as my remembrance is, of the courtroom.

Q. Was there some other equipment, some other tables, between your table and the reporters table?

A. There was not.

Q. Was the reporters table pushed back?

A. It was not.

Q. And your particular reason for selecting the Doylestown Inn to eat was what?

(722) A. Because I enjoy eating there.

Q. Who selected the Doylestown Inn for the jurors?

A. I didn't, sir. I don't know—I don't know who made

arrangements for the hotel accommodations of the jury, so I would guess it was probably—you don't want my guess, obviously —

Q. I don't want your guess. Now, Mr. Curtin, you were there when the jury was selected in the Darcy case?

A. Yes.

Q. And the jury—the jurors—before selection the venire was in another room?

A. That is right.

Q. And they were called in for their voir dire examination?

A. That is right.

Q. And what was the procedure after the jurors were accepted —

BY JUDGE MURPHY: Excuse me, sir! Judge Watson has arranged to meet someone at 4:30. It is now 4:30 so we will recess until 10:00 o'clock tomorrow morning.

(Court adjourns for the day.)

(723) (March 19, 1954, 10 o'clock a. m.)

(All appearances the same as before David Darcy present in person.)

MR. VAN ARTSDALEN: Mr. Curtin.

WILLARD CURTIN, resumed the stand and testified further as follows:

MR. MARGIOTTI: If Your Honor please, may I kindly

Atty. Willard S. Curtin—Cross

request the Court to grant me an exception to the questions propounded by the Court to Darcy yesterday?

JUDGE MURPHY: On what ground?

MR. MARGIOTTI: On the ground that the defendant was compelled to make statements which he was not required to make by the Constitution of the United States.

JUDGE MURPHY: It is true that the defendant has the right not to testify against himself, and in this proceeding Mr. Margiotti has presented a petition to this court criticizing the previous lawyer for not permitting the defendant to take the stand to testify. The Court felt that in view of that circumstance where counsel in this case has in the petition criticized the attorney who formerly represented him to the extent of saying that he was not permitted to testify, the Court felt he should be asked that question whether or not he desired to offer any testimony. That was the inquiry made by the Court, and you have an (724) exception.

MR. MARGIOTTI: If Your Honor please, may I make one statement?

JUDGE MURPHY: Let me interrupt. If we did not ask him that question then he might very well say that you did not allow him to talk.

MR. MARGIOTTI: The issue is only on the question of feeling and prejudice under the mandate which is before your Honorable Court.

JUDGE MURPHY: But this defendant was in that court

Atty. Willard S. Curtin—Cross

room all the time, and the briefs before us said that he did not have an opportunity to say something, and we did not know whether you would have asked him or not. So we asked him. And as we understand you, then the next lawyer could say that we did not ask him. Now, constitutional law has got to a point where the Court, in a sincere effort to try to protect the constitutional rights of the defendant, in one case the counsel is criticized and in the other the Court asked him and then the other counsel criticizes for asking him—then we have got to a sorry end.

MR. VAN ARTSDALEN: Mr. Margiotti, I want to ask you a question because I want your views. In what way could the notice of this court have interfered with the rights of your client in this proceeding?

MR. MARGIOTTI: In that the Court required the (725) defendant to stand up to answer the question, "Have you anything to add to the testimony which has been produced?"

JUDGE MURPHY: In what way was he injured or damaged?

MR. MARGIOTTI: I do not think, whether he is injured or damaged, he is required to make any answer under the Constitution.

JUDGE MURPHY: I do not understand your point.

MR. MARGIOTTI: His Honor, Judge Murphy, has ruled and the record is there.

JUDGE MURPHY: The record is there, and the record

shows that Mr. Margiotti and Judge Pannell did not object at that time. They were both in court, listening, and we hope their eyes were open. We think that counsel saw what happened. I just want to add one other thing: If the Constitution of the United States does not stand for truth and justice, we better find out.

CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Now, Mr. Curtin, I believe you testified yesterday that this case began on June 7?

A. I believe that is correct.

Q. Do you know how much time elapsed between the ending of the Foster-Zietz trial and the beginning of the Darcy trial?

(726) A. The Foster-Zietz trial concluded the week previously. At the moment I am not familiar with what day of that week it concluded, but it was the week before.

Q. Approximately was it toward the end of the week?

A. My recollection would be, sir, that it was around the middle of the week sometime. It may be a day or two one way or the other.

Q. You have appeared in opposition to the relator in all steps in this case, haven't you?

A. That is correct.

Q. You appeared before the Pardon Board in opposition to commutation?

A. I did, sir.

Q. I believe you argued for the Commonwealth before the Court of Appeals in one of the cases, I believe the final case?

A. That is true, sir.

Q. You appeared in every step until you left the Office of the District Attorney?

A. That is correct.

Q. Now in appearing before the Pardon Board, do you remember making a statement there that three weeks elapsed between the ending of the Foster-Zietz trial and the beginning of the Darcy trial?

A. No, Mr. Margiotti. I have no recollection of that statement.

(727) Q. Do you remember being asked how much time elapsed between the two trials?

A. No. I do not.

Q. Do you remember being asked when the jurors first reported for the Darcy trial?

A. No, sir. I do not.

Q. Do you remember this statement, that they reported and were sent home and came back for the Darcy trial?

A. No, sir. I do not.

Q. You have testified to the Court on the 7th of June —

A. That is right.

Q. That was the beginning of the trial?

A. Yes, sir.

Q. Had they appeared before that time?

A. No. They had not.

Q. Do you know whether they had?

A. I do.

Q. Have you looked at the record?

A. Yes.

Q. What record have you looked at?

A. I checked last night. I looked at the vouchers of warrants for the appearance of jurors and the days they were paid in the Darcy case.

Q. Have you looked at the docket entries of the court matters?

(728) A. I have not.

Q. While I am getting those records, I will ask you a few more questions in the interests of time. Is it a fact that the Darcy case was not scheduled for trial originally for the May term?

A. It is my recollection, sir, that was the way the two trials were scheduled, that the Darcy trial was to start as soon as the other trial had been completed the following week.

Q. Isn't it a fact that it was announced by your office and carried in the newspapers, that only two of the defendants would be tried at the May term, and that the other defendant, Mr. Darcy, would be tried at the next term?

A. I don't know what was carried in the newspapers, but I have no recollection of our office announcing that there was to be any interval between the two trials.

Q. Do you know when the jurors appeared for the Foster-Zietz trial?

A. My thought would be that it would be two Mondays prior to June 7.

Q. I am going to show you now the criminal minutes marked—I thought this had an exhibit number, but I believe your Honor waived that until we had it photostated and then offered it in evidence, but I do not see any exhibit number on the book, but the minutes anyhow on Page 391 —

(729) A. What do you want me to look at?

Q. I want you to look at Page 391.

A. All of it, or do you want to direct my attention to some part of it?

Q. I will direct your attention to part of it so you can quickly go to it. Will you state now when the jurors appeared for the Foster-Zietz trial?

A. Well, this docket —

Att'y. Willard S. Curtin—Cross

MR. VAN ARTSDALEN: If the Court please, the record speaks for itself. I object to the question.

JUDGE MURPHY: Read the question, Mr. Reporter.

(Question read.)

JUDGE MURPHY: We understand the question to be this: The witness on the stand has made a statement when the jurors appeared. Two weeks before said he; two weeks before June 7. He has now been shown the criminal minutes docket and asked to read it, and, as I understand it, he asked in face of reading that, does he change his opinion?

MR. MARGIOTTI: That is right.

JUDGE MURPHY: We will permit the question.

THE WITNESS: This docket indicates that the jurors reported on May 24, which would be two weeks before June 7.

BY MR. MARGIOTTI:

(730) Q. All right. Now, then, when that jury appeared at the Foster-Zietz trial where did it appear, what room?

A. The jury would be summoned and their roll would be called in the main court room.

Q. Which was the custom in that court?

A. That is right.

Q. Now, will you go to the docket—same docket, Page 393, and will you tell me—will you read that, please, and after reading that I want to ask you a question.

A. Do you want me to read it aloud?

Atty. Willard S. Curtin—Cross

Q. No. Read it to yourself and I will ask you a question.

A. O. K. I have read it.

Q. Do you still say that the jury in the Darcy case did not appear until June 7 in view of that record?

A. Yes. I do. I say they did not appear in the court room on the morning of June 1st.

Q. How do you know they did not appear in the court room on the morning of June 1st?

A. Because, sir, we were still trying the Foster-Zietz case and there was no jury panel appeared in that court room during that trial.

Q. Do you know whether any of the jurors appeared in that room, any at all?

A. Do you mean, do I know any came in and sat among the spectators?

Q. Yes, exactly.

A. No. I have no record of it.

Q. And the record shows that the jury for the Foster-Zietz trial appeared on June 1st?

A. No. This says they were summoned by the sheriff on that day.

Q. In the Darcy case, pardon me.

Isn't the language the same in the Foster-Zietz trial for the 24th?

A. Yes.

Q. So reporting the incident of the 24th, it was reported in the same manner as June 1st?

A. So far as this docket shows.

Q. And you have no recollection of where they appeared, how they appeared, and who saw them?

A. Yes. I have a very distinct recollection that they did not appear in the main court room.

Q. You were sitting at the counsel table?

A. That is right.

Q. There are three chairs at that table?

A. You are speaking of the Commonwealth's table?

Q. Yes.

A. Yes. There are three chairs there.

Q. And you would have your back, of course, to what would be (732) Judge Keller's right?

A. I would have my back to Judge Keller's right?

Q. Yes. You would be facing the jury?

A. That is right. The judge's bench was on my left.

Q. All right. What I meant to say, your back was in the opposite direction, but you were facing the jury; that explains it.

A. That is right.

Q. The body of the court room was to your right?

A. That is right.

Q. Every time somebody came into the court room did you take a peek to see who they were?

A. No.

Q. How do you know that any of the jurors came in there?

A. I didn't say that. I said that none of the jurors came in and sat in the place where they would sit when they were summoned for jury service.

Q. Will you tell me where this jury reported on June 1st?

JUDGE MURPHY: If they reported.

BY MR. MARGIOTTI:

Q. If they reported, and you know.

JUDGE MURPHY: I beg your pardon. Read the question.

MR. MARGIOTTI: I will withdraw it.

JUDGE MURPHY: Just reframe your question, if you will.

(733) MR. MARGIOTTI: I will withdraw the question.

JUDGE MURPHY: All right.

BY MR. MARGIOTTI:

Q. Will you tell me where this jury reported on June 1st, if they did report, and provided you know?

A. To my knowledge they did not report at all, sir. They certainly did not report in the main court room.

Q. When the main court room was occupied—strike that out. Didn't you tell the Pardon Board in my presence when I was arguing the case for Mr. Darcy that the jury reported about three weeks before and that they were excused and asked to return on June 7th?

A. I told you before, Mr. Margiotti, I have no recollection of saying that to the Pardon Board.

Q. Do you remember at the time you appeared before the Pardon Board there was a Secretary of the Pardon Board taking the speeches or the statements made by both counsel for the applicant as well as yourself?

A. I have no recollection of there being stenographic notes made of what was said.

Q. All right. Now, then, if this jury did report on June 1st would they have reported in any other section of that court house?

A. Well, they never did, sir. The practice is always, when the jury came in they came into the main court room where the (734) roll was called immediately after the court opened on the morning of their examination.

Q. In other words, it was natural for them to come into this room according to your regulation, but you say they did not come in that morning on June 1st?

A. I say they did not come into the court room on June 1st, and I would say that the matter of their coming in, that the jury would assemble in the jury room, that is, the men's jury room and the women's jury room.

JUDGE MURPHY: Just a moment.

MR. PANNELL: I was going to remove the book if he was through.

JUDGE MURPHY: But we are not going to have one counsel interrogate and then co-counsel interrogate. Give the witness' partial answer.

(Answer read.)

BY MR. MARGIOTTI:

Q. And when —

JUDGE MURPHY: No. That is only a partial answer. Now, give the partial answer again, please.

(Answer read.)

THE WITNESS: (Continuing.) The men and women would each assemble in their respective jury rooms prior to the court, where there would be tipstaffs who would direct them what to do and immediately before 10 o'clock, a minute or two before, (735) they would be brought in as a body. The men and women would come into the court room at the same time, take seats in the section of the court

Atty. Willard S. Curtin—Cross.

room reserved for the jury, which was immediately behind where the jury sat when the jury was chosen.

Q. That was the usual and customary way?

A. I never recall any other method being used.

Q. And in this particular case do you know whether the jurors on June 1st reported to the men's room, where the men's room is you said, and where the women congregated; do you know?

A. No jurors came into the jury room—or came into the court room on the morning of June 1st.

MR. MARGIOTTI: We ask that the answer be stricken and the witness answer the question.

JUDGE MURPHY: Motion denied.

BY MR. MARGIOTTI:

Q. I will ask the question again. Do you know whether these jurors on June 1st, the Darcy jurors, appeared in these jury rooms that you mentioned, one for men and one for women—appeared in there on the morning of June 1st? Yes, or no, do you know?

A. I am sure they did not, sir because if they did we would have known about it.

MR. MARGIOTTI: We ask that the answer be stricken from the record because it is an opinion only.

JUDGE MURPHY: We will let it stand.

(736) BY MR. MARGIOTTI:

Q. Do you know?

A. I wasn't in either of the jury rooms; no, sir.

Q. Will you please answer the question? Do you know?

A. I would not say definitely that I know that they did not appear. I would say that if they did appear I very—I am very sure we would have known about it, and we had no such knowledge.

Q. Do you know who advised this jury, the Darcy jury, to appear on June 7?

A. It has always been done by the sheriff or some member of the sheriff's office.

Q. Who was the sheriff at that time?

A. I think the name—Allen if I remember correctly.

Q. You have testified that you observed how the jurors were selected, is that right?

A. You are speaking of the selection of the Darcy jury now?

Q. Yes.

A. Yes, that is right.

Q. I think you said that they were called in one by one by one and examined on their voir dire, and if accepted they took their chairs?

A. That is right.

Q. Did that apply to the entire fourteen jurors?

A. Mr. Margiotti, since yesterday I have been trying to recall (737) just what that situation was. About that time—up to about that time the practice had been to select all of the jurors and have them, if they were selected, take their seat in the jury box and wait there until the full jury was assembled. Just about that time, whether it was at this trial, before or after, the practice was changed, and as the jurors were selected they were removed to a little ante-room across the court room where they waited until the full jury was assembled. In this case I am not positive as to which it was, but I think they were all chosen and stayed in the jury box, but it is somewhat of a guess.

Q. Is that your best recollection?

A. My best recollection is that I think they assembled in the box.

Q. And remained there until the alternates were completed?

A. Yes. That is my recollection.

Q. All right. Now, don't you know that the jurors in the Darey case, so far as the record is concerned, shows that they did appear on June 1st, that they answered, and that a number of them were excused?

MR. VAN ARTSDALEN: If the Court please, I object to that question.

JUDGE MURPHY: May I see the book from which counsel purported to be reading?

MR. MARGIOTTI: I purported to read from Page 394.

(738) JUDGE MURPHY: May I see it, please?

MR. MARGIOTTI: Let me withdraw that question, Your Honor. I will reframe it.

JUDGE MURPHY: Well, withhold it one moment, please. What was the page counsel said, Mr. Hanover? (Addressing the court reporter.)

MR. MARGIOTTI: At the bottom of the page, Judge.

JUDGE MURPHY: You say you find that on Page 394, Mr. Margiotti?

MR. MARGIOTTI: About the jurors being excused.

JUDGE MURPHY: Were excused on June 1st?

MR. MARGIOTTI: That is my impression.

JUDGE MURPHY: If Page 393 and 394 have not been introduced in evidence, we direct that they be spelled out on the record at this point.

MR. MARGIOTTI: If Your Honor please, you will recall that they were introduced into evidence, and we asked leave to substitute photostats for those pages in order not to keep the entire record here.

JUDGE MURPHY: We direct that it be spelled out in the record at this point.

MR. MARGIOTTI: Well, spelled out means simply read it into the record what appears there, I assume. May I ask the Clerk to copy it?

(739) JUDGE MURPHY: The Court has given directions that it be spelled out.

(Page 393 of Relator's Exhibit No. 137 follows:

393

MAY TERM A. D. 1948

Bucks County, SS.

In the name and by the authority of the Commonwealth of Pennsylvania.

Honorable Hiram H. Keller, President of the Seventh Judicial District, consisting of the County of Bucks, by vir-

Atty. Willard S. Carlin—Cross

tue of said office, justice of the Courts of Quarter Sessions of the peace and oyer and terminer and general jail delivery, for the trial of capital and other offenses, in and for the said county.

To the Clerk of the Courts of Quarter Sessions of the peace, and oyer and terminer and general jail delivery of the County of Bucks, greeting:

We order and direct that you issue a venire to the Sheriff and Jury Commissioners of Bucks County, aforesaid, commanding the said Sheriff and Jury Commissioners to empanel, and the said Sheriff to summon, a traverse jury in the Courts of Quarter Sessions of the peace and oyer and terminer and general jail delivery, consistng of 120 qualified according to law, to make up the jury requisite to inquire of and perform all those things (740) which on our part shall be enjoined upon them, at the term thereof to be held at Doylestown, in and for the County of Bucks, commencing on the 17 day of May A. D. 1948, next after the date of this precept, to serve for the term thereof commencing on the 1 day of June A. D. 1948, dated at Doylestown, this 12 day of April A. D. 1948.

Hiram H. Keller L. S.

President Judge

Calvin S. Boyer L. S.

Judge

1948 June 1—List of Traverse Jurors summoned by the Sheriff and returned to May Term of Criminal Court A. D. 1948.

- | | |
|--------------------------|-----------------------------|
| 1. Frances C. Ashworth | 14. Virginia Brillman |
| 2. Edmund C. Anderson | 15. Walter S. Berger |
| 3. Alvin Albrecht | 16. Marguerite Bergstresser |
| 4. Clarence G. Angeny | 17. Charles A. Barndt |
| 5. John Alcorn | 18. Charles G. Brodie |
| 6. J. Harper Atkinson | 19. George Berner |
| 7. Dudley E. Bell | 20. Cathrine Bennett |
| 8. Anna W. Bucher | 21. Elwood W. Buck, Sr. |
| 9. Ruth G. Bliss | 22. Elizabeth Stetson Barry |
| 10. Irene E. Blanchard | 23. Fanny W. Benner |
| 11. Florence Beck | 24. Anna E. Cole |
| 12. John Barber | 25. James Court |
| 13. Maude C. Buckman | 26. Hugh P. Cassel |
| (741) 27. John J. Cole | 44. Edward Green |
| 28. Gladys A. Carnwath | 45. H. Arthur Hellyer |
| 29. Robert H. Clardendon | 46. Jesse H. Horne |
| 30. Dorothy M. Darrah | 47. Jsoehp S. Hetherington |
| 31. Gertrude Dixon | (sic) |
| 32. Erna M. Doane | 48. Emily O. Higgenbottom |
| 33. Elizabeth G. Elville | 49. William F. Hickey |
| 34. Martin Frei | 50. Joseph F. Hibbs |
| 35. L. Calvin Fluck | 51. John E. Harrop |
| 36. Irene Frack | 52. Ernest F. Hamm |
| 37. Joseph F. Ferry | 53. Robert W. Hall |
| 38. John G. Ferguson | 54. John M. Harding |
| 39. Alice S. Freed | 55. John R. Hansbury |
| 40. Miriam W. Flory | 56. Marian Harm |
| 41. Franklyn T. Fretz | 57. Samuel L. Illick |
| 42. Rachel L. Fox | 58. James G. Jackson |
| 43. Alleine C. Gardiner | 59. Eva F. Kinsey.) |

(Page 394 of Relator's Exhibit No. 137 follows.)

394

May Term A. D. 1948

- | | |
|------------------------------|---------------------------|
| 60. Russell F. Kleinman | 65. Harold Lake |
| 61. George H. Kerns | 66. Oliver C. Landis |
| 62. Clifton Leedom | 67. Mildred Lewis |
| 63. Delbert Lynn | 68. Harold L. Loud |
| 64. Joseph E. Lownes | 69. Everitt Miller |
| (742) 70. Roger Mason | 94. Frank Repetski |
| 71. Helen Virginia Mann | 95. Mabel J. Rook |
| 72. Charles L. Miller | 96. Velma A. Rosenberger |
| 73. Leonard Miller | 97. Edward J. Ryan |
| 74. Nicholas Mislán | 98. William S. V. Rodgers |
| 75. Emily V. Maddux | 99. William H. Slaughter |
| 76. R. Barclay Moon | 100. Lovada B. Schlichter |
| 77. Ethel G. Moyer | 101. William Frank Sigley |
| 78. Elsie Markley | 102. Elva S. Shive |
| 79. Stanley R. McKnight | 103. Ira M. Swartz |
| 80. Mary Mae Melchior | 104. Jacob Shivo, Jr. |
| 81. Ilse Milligan | 105. Anna K. Shaudys |
| 82. William Mulloey | 106. John McLaren Strong |
| 83. Elmer Ott | 107. Mary E. Singley |
| 84. Francis M. Phillips | 108. Emma Shaddinger |
| 85. Howard Price | 109. Mabel Senderling |
| 86. Elizabeth H. Prevost | 110. Mary Tyson |
| 87. Carlton A. Palmer | 111. Wesley H. Talley |
| 88. Norman B. Penrose | 112. Marie R. Torongo |
| 89. George P. Paxson | 113. Alda L. Tettemer |
| 90. W. D. Pardoe | 114. Marvey M. Wismer |
| 91. Ann L. Reed | 115. Amy P. Wurst |
| 92. Noah M. Rice | 116. Marven D. Weidner |
| 93. J. Alfred Rigby, Jr. | 117. Peter Wichser |
| (743) 118. Harry T. Westlake | 120. Harry W. Wambold.) |
| 119. Doris C. Wilson | |

Atty. Willard S. Curtin—Cross

List of Traverse Jurors that were excused from the May Term of Criminal Court A. D. 1948:

Frances C. Ashworth; John Alcorn; Irene E. Blanchard; Florence Beck; Charles G. Brodie; George Berner; Cathrine Bennett; Elwood W. Bucks, Sr.; Elizabeth Stetson Barry; Fanny W. Benner; James Court; John J. Cole; Gladys A. Carnwath; Dorothy M. Darrah; Gertrude Dixon; Irene Frack; Joseph A. Ferry; Alice S. Freed; Edward Green; H. Arthur Hellyer; Joseph S. Hetherington; John M. Harding; Marian Harm; Mildred Lewis; Everitt Miller; Elsie Markley; Mary Mae Melchior; William Mulloy; Elizabeth H. Prevost; Mabel J. Rook; Edward J. Ryan; Anna K. Shaudys; John McLaren Strong; Mary Tyson; Marie R. Torongo; Alda L. Tettemer; Harvey M. Wismer; Amy P. Wurst; Peter Wichser.

Report of Grand Jury for May (sic) Sessions, 1948.

To the Honorable Judges of said court:

We, the Grand Jury of the May Sessions, 1948, of the Criminal Court beg leave to submit the following:

We had before us 22 bills of indictment of which 20 were true bills, 1 bill untrue and 1 bill #22 withdrawn by Mr. Curtin.)

BY MR. MARGIOTTI:

Q. Let me ask you this: Under the date of June 1st, 1948, if (744) it is not true that there appears in this record: Frances C. Ashworth; John Alcorn; Irene E. Blanchard; Florence Beck; Charles G. Brodie; George Berner; Cathrine Bennett; Elwood W. Bucks, Sr.; Elizabeth Stetson Barry; Fanny W. Benner; James Court; John J. Cole; Gladys A. Carnwath; Dorothy M. Darrah; Gertrude Dixon;

Irene Frack; Joseph A. Ferry; Alice S. Freed; Edward Green; H. Arthur Hellyer; Joseph S. Hetherington; John M. Harding; Marian Harm; Mildred Lewis; Everitt Miller; Elsie Markley; Mary Mae Melchior; William Mulloy; Elizabeth H. Prevost; Mabel J. Rook; Edward J. Ryan; Anna K. Shaudys; John McLaren Strong; Mary Tyson; Marie R. Torongo; Alda L. Tettemer; Harvey M. Wismer; Amy P. Wurst; Peter Wichser?

A. Now, what is your question, sir?

Q. Doesn't that say that is a "List of Traverse Jurors that were excused from the May Term of Criminal Court A. D. 1948"?

A. Yes. That shows they were the jurors excused from that panel. It doesn't say when they were excused. I assume that they were excused much before that date by Judge Keller, which was the usual method.

Q. Do you not notice there is a date mentioned just before they were excused?

A. Yes.

Q. When?

(745) A. You are speaking of the minutes of June 1st, but that does not mean they were excused on June 1st. It says, when they were made, those minutes that those jurors had been excused.

Q. They could have been excused that day or sometime prior thereto, you mean?

A. They could have been excused that day, but most likely were excused sometime prior thereto.

MR. MARGIOTTI: Have I read enough in the record, Your Honor?

JUDGE MURPHY: You can read whatever you please.

MR. MARGIOTTI: You asked me to spell it out.

JUDGE MURPHY: I have directed the stenographer to spell it out, and it will be spelled out verbatim.

MR. MARGIOTTI: There is no question about that. We have offered it verbatim and it is in the record verbatim.

JUDGE MURPHY: May we get on, please?

MR. MARGIOTTI: We did that a long time ago.

BY MR. MARGIOTTI:

Q. Who fixes the dates for trials in the District Attorney's Office?

A. The District Attorney.

Q. Did you participate in that?

A. When I was Assistant District Attorney under Mr. Biester, he would make the trial list, and I would go over it with him. (746) He would ask for my suggestions. The responsibility for fixing the days for cases to be listed was the responsibility of the District Attorney, District Attorney Biester.

Q. Did you know that the Foster-Zietz trial was fixed by the District Attorney for May 24, 1948?

A. Yes.

Q. Did you know that the Darcy trial was fixed for June 7, 1948?

A. I knew that it was fixed to follow the week—the conclusion of the Foster-Zietz. We didn't know at that time how many days it would take to conclude the first two trials.

Q. When was it first determined previously or when the trial ended when was it first determined by the District Attorney that Darcy would be put on trial on June 7th?

Atty. Willard S. Curtin—Cross

JUDGE MURPHY: Will you read that question, Mr. Reporter?

(Question read.)

JUDGE MURPHY: All right.

THE WITNESS: District Attorney Biester made that decision. My recollection was that it was determined the latter part of the week of May 24 or very early in the week of June 1st, June 1st or 2nd, and at that time subpoenas were sent out, or the people were notified. The witnesses were present. They were the same in both cases.

(747) BY MR. MARGIOTTI:

Q. Isn't it true that the determination was not reached until the end of the Foster-Zietz trial or close to the end of the Foster-Zietz trial? Just yes or no.

A. Well, it would be closer—if the decision was made on Friday or Monday, that was close to the end of the Foster-Zietz trial.

Q. Friday or Monday?

A. The end of the week of May 24 and Monday and Tuesday, June 1st or June 2nd.

Q. Mr. Curtin, I want you to read Relator's Exhibit 51, being a photostat of the front page of the Doylestown Daily Intelligencer (Manding), and I want you to state—well, read it, first.

A. Which part do you want me to read?

Q. Here is the part marked "Four Murder and Four Manslaughter Trials Listed".

JUDGE MURPHY: Will you give the date, please, for the record?

MR. MARGIOTTI: The date of the newspaper is May the 14th.

(Witness reads to himself.)

THE WITNESS: Yes.

BY MR. MARGIOTTI:

Q. Now, do you notice that the story—this is in evidence —(748) states that only two will be tried during the approaching term and the two others, David Darcy and Felix Capone; will be tried later?

JUDGE MURPHY: Read the question, Mr. Reporter?

(Question read.)

THE WITNESS: That is right. It says in this article that "Four murder cases are listed on the docket", that two will be tried—"but only two will be tried during the approaching term". That is what the paper says.

Q. Who gave the story that only two would be tried during that term?

A. I have no idea.

Q. Did you?

A. No.

Q. Did the District Attorney?

A. I don't know whether the District Attorney did or not. I would doubt it.

Q. Wasn't it a fact that it was so arranged that only two would be tried during that term?

A. That is not my recollection of what the arrangements were, sir.

Q. All right. I am going to call to your attention Relator's Exhibit No. 55, a photostat of the front page of the Doylestown (749) Daily Intelligencer, of Monday afternoon, May 24, and ask you to read the article or look at the article, "Feasterville Murder Case Defendants Go On Trial".

A. (Complying.) Yes.

Q. I ask you if this exhibit does not carry the story that Zietz and Foster were going on trial May 24?

A. Yes.

Q. And the other two defendants, David Darcy, 22, and Felix Capone, 16, will be tried at a later term of the court?

A. That is what the article says.

Q. All right. Did you give that story to the newspaper people?

A. No. I did not.

Q. Do you know whether Mr. Biester did?

A. I don't know whether Mr. Biester did or not. I didn't at any time I was there.

Q. Isn't it a fact that on May 24 you didn't know whether you were going to try Felix—Mr. Darcy at that term?

JUDGE MURPHY: Just a minute. Read the question.

(Question read.)

BY MR. MARGIOTTI:

Q. (Continuing.) Felix Capone and Mr. Darcy at that term?

JUDGE MURPHY: Do you understand the question?

THE WITNESS: Yes.

JUDGE MURPHY: What is the answer?

(750) THE WITNESS: Yes. At that time it was our intention to try first Zietz, then Foster, then Darcy. My recollection is we had no intention to dispose of the Capone case then because it was taking another week of court and we disposed of three cases, and the Capone case went to a later time because it was then our information that Capone wanted to plead guilty, sir.

Q. Isn't it a fact that you tried Foster and Zietz together and not separately?

A. They were tried together.

Q. That case, according to the docket entry, terminated on June 4.

A. It could be.

Q. And that was a Friday before Darcy went on trial?

A. Well, it that was Friday, that is probably —

Q. All right. Do you know when it was that your office advised either counsel for Mr. Darcy or Mr. Darcy himself that he was to go on trial on Monday?

A. My recollection would be, sir, that it was early in the course of the Foster-Zietz trial, either Friday or Monday, that is, either Friday of the week of May 24 or Monday or Tuesday, June 1st or 2nd.

Q. And who did you notify?

A. Mr. Achey and I believe Mr. McBride, if I am not mistaken.

(751) Q. Did you notify the defendant?

A. Did we notify the defendant?

Q. Yes, sir.

A. I would presume that we did, sir. I personally —

MR. MARGIOTTI: I ask it be stricken out.

JUDGE MURPHY: We will let it stand.

BY MR. MARGIOTTI:

Q. Why do you presume you did? *

A. I have no independent recollection of notifying the defendant myself. My guess would be that somebody in the office did. I didn't.

MR. MARGIOTTI: We object to his guess.

JUDGE MURPHY: We will let it stand. When you ask "you", it is a collective "you". As I understand the question, it has two intimations, collective and individual, and it embraces all the forces of the District Attorney and the Commonwealth. We will let it stand.

MR. MARGIOTTI: What I am objecting to is the witness said "I am guessing".

JUDGE MURPHY: We will let it stand.

BY MR. MARGIOTTI:

Q. Do you know whether anybody in your office notified the defendant?

A. I do not.

(752) Q. Isn't it a fact that for the week of June 1st there was a graduation exercise scheduled in that court room for your high school?

A. I have no recollection of that, sir.

Q. Isn't it a fact that that graduation exercise was postponed so far as the court room was concerned?

MR. VAN ARTSDALEN: If Your Honor please, I object to the form of the question. The witness said he has no recollection.

Atty. Willard S. Curtin—Cross

JUDGE MURPHY: Just read the first question first. We are not going to be rushed. All right. Now, read the first question, Mr. Reporter.

(Question read as follows:

"Q. Isn't it a fact that for the week of June 1st there was a graduation exercise scheduled in that court room for your high school?"

Answer read as follows:

"A. I have no recollection of that, sir.")

JUDGE MURPHY: Will you please read the second question.

(Question read as follows:

"Q. Isn't it a fact that the graduation exercise was postponed so far as the court room was concerned?"

JUDGE MURPHY: The objection is overruled.

(753). THE WITNESS: I know nothing about the graduation exercises. I have no recollection of them at all, sir—of those exercises.

BY MR. MARGIOTTI:

Q. Up until that year isn't it a fact that the high school exercises—graduation exercises were held in that court room?

A. I don't know, Mr. Margiotti, where the Doylestown High School had their graduation exercises. I live in Morrisville and I have no interest in the Doylestown school system.

Q. Did you know of it being held there at any time?

Atty. Willard S. Curtin—Cross

A. I do not, sir. It may or may not be. I know nothing about where they held their graduation exercises.

Q. Did you know that the Foster-Zietz trial—strike that, please.

Did you know that the evidence and the proceedings generally of the Foster-Zietz trial were publicized daily in the Doylestown Daily Intelligencer?

A. There was a lot of publicity of it in the Doylestown Intelligencer, yes.

Q. Do you know that the newspapers of that county did the same thing?

A. I believe there were articles in other newspapers in the country, yes.

Q. Do you know that in many instances the Doylestown paper (754) had carried Q-A's, questions and answers?

A. I don't recall all the articles, sir, and what was in them. I know there was publicity about the trial—both of them.

Q. Did you know that the radio carried news comments on the trial?

A. I believe I did hear that, yes. I didn't hear them. I do not know what was in them. Yes, I believe that was the only station I heard that did that, was a small county station.

Q. All right.

A. I don't think any of the larger stations carried any news items.

Q. Did you at any time as the District Attorney of that county make application to the Court to postpone or to fix the trial—the Darcy trial for a later date?

A. I wasn't the District Attorney.

Q. As assistant?

A. I made no such petition.

Q. Do you know whether Mr. Riester did as District Attorney?

A. I do not think—I do not know whether he did or not.

Q. Do you know whether he did?

A. Whether he did make application?

Q. Yes.

A. To do what?

Q. To have the case put off for a week or two or three?

(755) A. I know of no application was filed by the District Attorney, and I know none was filed by myself.

Q. I want you to look at Relator's Exhibit No. 93 and particularly the last item under "We noticed * * *"

JUDGE MURPHY: Let me say for the record at this point, in view of the objections this morning to the Court's question, if the District Attorney or the Assistant District Attorney had done that, there would be a nice constitutional issue that the trial had been interfered with, as has been challenged here in court.

MR. MARGIOTTI: I don't think so. Your Honor has a right to think —

THE COURT: The observation is in the record at this point.

MR. MARGIOTTI: My observation is that the District Attorney is as much the counsel for the defense as he is for the Commonwealth; and our contention is right along that they should have made an application for continuance themselves, of their own motion.

JUDGE MURPHY: There is an objection to the Court asking a question. It is in the record.

THE WITNESS: I have read it.

BY MR. MARGIOTTI:

Q. And that article says: "In a Philadelphia newspaper column (756) the following excerpt: 'So many murder trials are cluttering the Bucks county criminal docket that Doylestown High School graduates won't be able to hold their commencement exercises in the ancient court house. Instead they will be graduated outdoors.'"

Was that called to your attention during the trial?

A. No, it was not. It is rather surprising to me because, I mean, if that is true, there were not many night sessions.

Q. This article is —

JUDGE MURPHY: Read the witness' answer. I did not hear it.

MR. MARGIOTTI: I beg your pardon, Your Honor. I thought he was through.

JUDGE MURPHY: Of course, we are going at a rapid speed this morning unlike all the other sessions in this case. It may be that you are unduly enthusiastic today but it is bad on the blood pressure. We only have so long to live and we are not going to be rushed, and there is a tenseness and an atmosphere of rushing in this court room this morning.

MR. MARGIOTTI: I do not want to rush anybody.

JUDGE MURPHY: It is the atmosphere we are referring to.

MR. MARGIOTTI: I have been rushed a little bit in the past, too, by some of my own people.

(757) JUDGE MURPHY: Now, Mr. Reporter, read the question and answer before the colloquy.

(Record read.)

BY MR. MARGIOTTI:

Q. Is this the first time you have seen that particular article that I have just called to your attention?

A. I would hesitate to say yes or no to that, Mr. Margiotti. I don't know.

Q. Now, Mr. Curtin —

A. Excuse me, Mr. Margiotti. Could I say something? While I have been sitting here waiting, I was trying to go over in my mind when we notified Mr. Achey and Mr. McBride about the Darcy trial, and I am quite sure that a letter was sent to Mr. Achey at the same time all the cases were listed at the start of the trial term, a week before, setting forth that he would start the week after the Foster-Zietz trial was concluded.

Q. Do you have a copy of the notice you sent out?

A. I haven't it here. I am just trying to go over in my mind what happened in response to your question.

Q. Will you please tell me whether or not a copy exists of that notice?

A. I am not positive a written communication or a phone call, but the attorneys were notified of all cases on trial, and I am sure that Achey was notified with others when the Darcy trial (758) would be heard.

Q. Now, do you remember seeing an article in the Evening Bulletin—this is not in evidence—but I am asking you this question: As of June 3, 1948, an article which read, "Two in murder trial offer no defense"?

A. I read a number of newspaper articles. Whether I read that one or not I have no recollection, Mr. Margiotti.

Atty. Willard S. Curtin—Cross

Q. The article stated, "Crows"—

MR. VAN ARTSDALEN: If the Court please, we will object to the form of the question.

JUDGE MURPHY: Sustained. The best way is to put the article in evidence.

MR. MARGIOTTI: This is for the purpose of cross-examination, and we propose to introduce the article, but he says he knows nothing about it. I am calling it to his attention, if Your Honor please, and later on introduce it. I have said it is not in evidence.

JUDGE MURPHY: Read the partial question, Mr. Reporter.

(Record read.)

JUDGE MURPHY: It is assuming a fact not in evidence.

BY MR. MARGIOTTI:

Q. Isn't it a fact at the end of the Foster-Zietz trial—just a minute. I withdraw the question.

(759) JUDGE MURPHY: We would be glad to have the article offered in evidence.

MR. MARGIOTTI: I see here something that may be better than the article.

BY MR. MARGIOTTI:

Q. Isn't it true that the Foster-Zietz trial, at the end

Judge Boyer said just before the summations to the jury, "Well, we are going to get through faster than we anticipated, and if we get through in time we will start the Darcy trial Monday"—Judge Boyer?

A. I don't recall Judge Boyer saying that. If he did it would certainly show in the notes of testimony.

Q. You don't remember that?

A. I don't remember that.

Q. All right. Did you have any extra tables in the court room during the trial?

A. We did not.

Q. Where was the paraphernalia for the ballistics expert kept?

A. Where was it kept?

Q. Yes.

A. He had it himself, sir, until it was introduced into evidence.

Q. Before he introduced it, was it on the table?

A. What do you mean, the guns or the charts?

(760) Q. Everything that he had there.

A. Things that the ballistics expert—some of the things he had were the gun, the slugs, and the cartridge cases. They were—we got them from him when in the course of the trial we reached the point of the trial, and we had them numbered. The other information, such as pictures that he had made through the comparison microscope and things like that, he kept in his own brief case until he was called into the trial, when they were given a number and were introduced and then used.

Q. Were they put on a table?

A. After they were introduced they were put on a table.

Q. But not before?

A. No.

Q. The tables they were put on, what tables were they?

JUDGE MURPHY: Just a minute. Read the partial answer of this witness.

(Answer read as follows: "A. After they were introduced they were put on a table.")

JUDGE MURPHY: The Court heard him say "Nothing", and then Mr. Margiotti interrupted with a question.

MR. MARGIOTTI: I thought, Your Honor, he was through.

JUDGE MURPHY: Read the previous question.

BY MR. MARGIOTTI:

(761) Q. Were you through?

A. I was starting to finish the answer.

Q. Go ahead and finish whatever you wanted to finish.

JUDGE MURPHY: No. Read the question, Mr. Reporter. Let us have the stenographic record in order.

(Question read as follows: "Q. Were they put on a table?")

THE WITNESS: Nothing was placed on the Commonwealth's table, where all the exhibits eventually were, until after they were offered in the evidence.

✓ BY MR. MARGIOTTI:

Q: Which of those chairs at the Commonwealth table did you occupy?

A. The middle one.

Q. As a general proposition?

A. The middle one.

Q. And which one did Mr. Biester occupy?

A. Mr. Biester sat to my left.

MR. MARGIOTTI: When I call him Mr. Biester, Your Honor, it is not out of disrespect. I know he is a judge. I call him that because he was a District Attorney at that time.

BY MR. MARGIOTTI:

Q. And then he was ahead of you so far as the bench was concerned?

(762) A. He wasn't ahead of me. He was to my left.

Q. He was between you and the bench?

A. That is right.

Q. Then did you occupy those positions generally throughout the trial?

A. Yes.

Q. And you would be facing the jury generally throughout the trial?

A. That is right.

Q. Now, you were asked whether or not you saw any magazines or newspapers in the court room?

A. That is right.

Q. Of course, you did not look back to see whether there were any magazines in that court room?

A. I didn't make a periodic inspection for magazines and newspapers because there were none there, Sir.

Q. Did you look back?

A. Mr. Margiotti, if there had been any magazines or newspapers into the court room we would have known it.

because the tipstaff certainly would have done something about it.

Q. I am asking you, did you yourself look back?

A. I occasionally looked to my side and in front of me, and in that position I could see half of the court room, and I saw no magazines or newspapers during court, and when I went (763) in and out of the court room during recesses I saw no magazines or newspapers in any other parts of the court room.

Q. Which half of the court room?

A. I could see everything as you come into the court room from the main door to the rear; I can see all parts of the court room which would be on the right-hand side of the center aisle.

Q. Do you say that there were no magazines or you did not see any?

A. I say I did not see any.

Q. All right. Now, do you know how many reporters were at the reporters' table?

A. Not many. The Doylestown paper had a reporter there, and that reporter customarily acts as an associate reporter for the Philadelphia metropolitan papers. So that there would be one and sometimes two reporters from the Doylestown Intelligencer there all the time, and occasionally there was one other reporter there, and I believe on one or two occasions a third—two from the metropolitan papers, not all the time, but for a short period of time.

Q. Where did they sit?

A. At the reporters' table.

Q. And were they facing the jury?

A. Yes. They were.

(764) Q. Did the reporters occupy the chairs nearest to you or furthest away from you?

A. The reporters occupied the chairs in back of the re-

porters' table so that they could write on the table immediately in front of them.

Q. In other words, the table in front of them would be between you and them?

A. That's right.

Q. And these reporters would be facing the same way you were facing?

A. That is right.

Q. They would be looking at your back?

A. That is right.

Q. Now, do you—now, I understood you to say yesterday, and it may be my mistake, but you testified that no one was seated at the reporters' table?

A. If I said that I didn't mean that. There were people seated at the reporters' table. They were reporters. They would come in one, two, or three, as the case may be, and occasionally if those chairs weren't completely occupied some of the attorneys would be seated in those chairs.

Q. I understand. Now, then, how do you remember where you were seated on Friday night?

A. Because on Friday night I spent most of that session reading (765) off the confession to the jury, which was a very long confession as I recall, twenty some odd pages.

Q. How long—approximately how long did it take you to read that confession to the jury? That was Exhibit 19. I think it was.

A. I don't know the number.

Q. Well, now, the confession —

A. About half an hour as I recall it.

JUDGE MURPHY: Just for the record, there is no number in this court, and you are referring to the confession number in the county court, I take it.

MR. MARGIOTTI: That is right.

JUDGE MURPHY: All right. So the record will not be confused read Mr. Margiotti's portion question, if you will, please.

(Record read.)

BY MR. MARGIOTTI:

Q. And during the time you read this confession did you read it slowly and distinctly, so that the jury could follow the import of the confession?

A. I did, indeed, sir.

Q. And during that time your attention was on what you were reading?

A. That is correct.

Q. And you were facing the jury?

(766) A. That is right.

Q. And your back would be to where this chair appears, marked Judge Boyer?

A. That is right.

Q. In that section of the court room?

A. That is right.

Q. Of course, you do not mean to tell where any particular person was in that section of the court room?

A. During that period of time?

Q. During the period you were reading to the jury?

A. That is correct.

Q. You do not know where Mr. Biester was at that time—now His Honor, Judge Biester?

A. During that thirty minutes?

Q. Yes.

A. Or approximately thirty. It may have been longer.

He was seated alongside of me in his usual chair for a few minutes, as I recall, and then he got up.—Now where he went I don't know.

Q. And you continued to read?

A. That is right.

Q. Now, you said you remember Judge Boyer appearing on the bench?

A. That is right.

Q. How many days do you remember of the Darcy trial that he (767) appeared on the bench with Judge Keller?

A. Well, sir, as I said yesterday, he came in every morning when court opened, and then we were having some other criminal matters disposed of, so that Judge Boyer was conducting court in another court room, so that for one, two, or three days of that week he wasn't around the main court room at all, as I recall, because he was occupied in another court room. It is my recollection that he didn't—wasn't free from his duties in another court until about my best recollection is about Thursday of that week. Then I believe he did come and sat on the bench on a few occasions. My thought was that he didn't sit there at all after there was a sidebar conference. My thought was that that occurred about two days after the actual taking of testimony which would have been about Thursday. It could have been later because it was Thursday before he was really free from his other duties, but he walked up and sat alongside of Judge Keller, oh, only to the best of my recollection two or three times for short intervals before the sidebar conference, and after that not at all.

Q. Well, so that we get this correct, during the entire trial of course the Court convened every morning?

A. That is right.

Q. How many times at the convening of court did Judge Boyer appear with Judge Keller on the bench?

A. He came every morning at the convening of court except (768) Saturday. I am not sure that he was there on Saturday morning. I don't know. I don't think he was there for the convening of court on Saturday morning, but he was the other five days, and the Monday following.

Q. You say he appeared at the convening of court, and was there any business done before the two judges after convening court other than the Darcy trial?

A. My recollection is that there were some very—on the Monday there was quite a bit of miscellaneous business.

Q. The first day?

A. Yes. My recollection is the rest of the week there would be maybe one or two papers presented by some attorney in the miscellaneous court.

Q. When the papers are presented are they given a date of presentation?

A. You mean when attorneys' papers are presented?

Q. Yes.

A. They normally are.

Q. And who keeps those papers?

A. It depends in what court they are. If the Orphans Court they would go in the Orphans Court; in the Quarter Sessions Court they would go in the Quarter Sessions.

Q. Well, now ———

MR. VAN ARTSDALEN: I don't think the witness (769-770) finished his answer.

JUDGE MURPHY: The Court's recollection was that in the midst of his answer counsel began another question.

THE WITNESS: If it is a Common Pleas matter it would go to the Prothonotary's Office.

BY MR. MARGIOTTI:

Q. Do you know of any attorney who presented any motion or a petition or any other matter for the consideration of the Court after Monday morning?

A. I have absolutely no recollection of any individual lawyers or any papers that were presented, sir.

Q. Have you made any search of the various records in your county to ascertain whether there are any such papers?

A. No. I have not.

JUDGE MURPHY: I might just suggest for the benefit of counsel on either side, if you examine that envelope you will find a matter referred to in the minutes in the yellow sheet.

BY MR. MARGIOTTI:

Q. Do you know how long Judge Boyer remained on the bench each morning?

A. Until the miscellaneous business was concluded. I don't know just how many minutes that was on each morning.

Q. Do you know whether he remained any longer than the conclusion of the miscellaneous business?

(771) A. He may have for the latter part of the week.

Q. During the latter part of the week?

A: Yes. After he finished his criminal work in other courts.

Q. He had some criminal work to finish himself?

A. We had a number of other matters that were completed that week, yes.

Q. Where did he hold court?

A. In another section of the court room.

Q. In the Grand Jury Room?

A. What we call the Grand Jury Room.

Q. During the time he sat on the bench, during the entire time that he was on the bench did he participate in discussions or collaborations with Judge Keller?

A. He may have had some whispered conversations with Judge Keller. I don't know. I don't know that he did not say anything that could be heard by us. I mean, he took no active—active participations in the trial at all.

Q. You say he may have had some whispered conversations. Your memory is not definite?

A. That is right.

Q. Did he or did he not to the best of your knowledge?

A. Whether they leaned over and said something to one another during any periods they were sitting there, I don't know. I have no definite recollection of it occurring but it could have.

(772) JUDGE MURPHY: The question is: Do you have a definite recollection that they did in fact?

THE WITNESS: I have not, sir.

JUDGE MURPHY: All right.

BY MR. MARGIOTTI:

Q. Do you have any recollection of a sidebar conference which was engaged in between Judge Boyer and Mr. Achey?

A. I have a recollection of a sidebar conference which I have mentioned before, Mr. Margiotti, where both Mr. Achey and the District Attorney Biester went to sidebar and had some conversation with Judge Keller, and I be-

lieve Judge Boyer interjected something. Then there was a further conversation between Mr. Achey and Judge Boyer at sidebar which I, seated at the defendant's table, could not hear.

Q. The Commonwealth table?

A. I am sorry. At the Commonwealth's table that I could not hear.

Q. We would not mind sitting you at the defendant's table. Now, just a minute. On the occasion that the judge was on the bench, that is, Judge Boyer, and prior to the sidebar conference, will you indicate how long Judge Boyer had been sitting on the bench?

A. You mean the occasion which concluded with a sidebar conference?

(773) Q. I don't know whether it concluded with that—in which that occurred?

A. My best estimate would be about twenty minutes.

Q. Was that in the afternoon or in the morning?

A. I think that was in the morning, sir.

Q. Was that twenty minutes after court convened or was it—or did some time elapse between the convening of court and the beginning of the twenty minutes?

A. My recollection is that it was sometime after court convened. I don't think that Judge Boyer on that occasion was on there continuously from the time that court convened until it occurred.

Q. Do you know where the judge came from?

A. Out of the Judge's Chambers.

Q. That would be to the right of Judge Keller?

A. That is right, through that door that led into the Judge's Chambers.

Q. And he walked up on the bench?

A. That is right.

Q. Had anybody sent for him?

A. I have no recollection of anybody sending for him.

Q. Did I understand you to say that thereafter some agreement was made about the appearance of Judge Boyer?

A. No. I said nothing about any agreement, sir.

(774) Q. I didn't think you did, but somebody associated with me said that to me and that is the reason I am asking the question. I did not mean to intimate that you did either.

JUDGE MURPHY: We recall the testimony of the witness that there was objection to his being there and he did not come on the bench thereafter.

MR. MARGIOTTI: That is my recollection too. Your Honor.

JUDGE MURPHY: As I understand it, the record shows the objection and shows the colloquy.

MR. MARGIOTTI: Shows the what?

JUDGE MURPHY: The colloquy.

MR. MARGIOTTI: Oh, sure. Judge, can we have our morning recess now?

JUDGE MURPHY: We will take a ten-minute recess.

(Recess taken.)

(David Darcy present in person.)

BY MR. MARGIOTTI:

Q. Do you remember where you were when the Judge delivered his charge?

A. My recollection is, sir, that I was sitting with Judge Biester in one of the two chairs in the two rows of chairs that are immediately in front of the reporters' table, in the first of those two rows of chairs, in the front of those two rows.

(775) Q. I am showing you Relator's Exhibit No. 135. Could you indicate on that exhibit where you were seated?

A. Yes. My recollection is that I was seated in either this chair, being the third chair in from the bench in the front row, or the second chair, and Judge Biester as I recall was alongside of me to my left.

Q. In other words, you were in front of the reporters' desk?

A. That is right.

Q. Now, why did you leave the Commonwealth's table during the charge?

A. Sir, we followed the practice that we always do, moving back from the table where you can stretch and move around a little bit rather than sitting right up in front of the jury.

Q. I see. When Judge Keller delivered his charge, where was he seated?

A. He was seated in the chair nearest the witness box on the bench where he sat through the trial.

Q. That is right, and that would be closer to the Commonwealth's table than where you were seated during the charge?

A. You mean Judge Keller would be seated closer to the Commonwealth's table than I was seated at the time of the charge?

Q. No. Than you were seated—Judge Keller would be closer to the Commonwealth's table than he would be to you and to Mr. Biester?

(776) A. That is true.

Q. Did you know who was behind you?

A. I have no recollection of anyone being behind us, sir.

Q. Do you have any recollection of looking to find out who was behind you?

A. I have no recollection of looking around to see who was behind us. I am quite sure there were no reporters at the table during the charge of the Court.

Q. I have in mind particularly whether there was—whether you know that any person or persons were occupying those chairs that were immediately in front of the spectators' benches; do you remember?

A. I have no recollection of anyone being in those chairs, sir.

Q. Do you have any recollection of looking for that purpose?

A. No. I did not look for that purpose.

Q. Did you see Judge Boyer during the charge?

A. I have no recollection of seeing Judge Boyer at all during the charge of Judge Keller in that case.

Q. Now, on the question of the charge do you remember where you were toward the end of that charge?

A. I was in the same place throughout the charge, sir, as I recall it.

Q. Do you remember any part of the charge toward the end?

A. I am not sure what you mean. What do you mean, do you (777) remember any part? Do I remember what Judge Keller said?

Q. Yes.

A. I don't remember his words, I know at the end there is the usual question of counsel as to whether they have anything to add.

Q. Do you remember Judge Keller saying, "Have I overlooked anything? Are there any corrections to be made?"

A. Yes. I remember that.

Q. And Mr. Achey said, "Nothing for the defendant, Your Honor"?

A. That's right.

Q. Now, neither you or Mr. Biester said anything then did you or did you?

A. District Attorney Biester said something at the conclusion of Judge Keller's charge.

Q. No. I am talking about immediately after Mr. Achey said, "Nothing for the defendant, Your Honor", immediately after that.

A. Well, my recollection is that Judge Keller then said a few more words, and then Judge Biester said something or made some correction or suggestion that something may have been overlooked, or something of that nature.

Q. Well, to refresh your memory the Court said: (Reading) "Members of the Jury: In conclusion I have instructed you as to what I understand to be the law bearing on all the questions arising in this case, as well as the substance of the testimony (778) bearing on the shooting as I recall it. I trust I have made myself clear and that I have succeeded in giving it to you so that you comprehend and understand it. What does it indicate to your minds as jurors? I may add that in the rendition of your verdict, if you convict this defendant of murder in the first degree, then you will not only have to announce the verdict, but also announce the punishment, what the punishment shall be."

Do you remember the Judge saying that?

A. I remember language like that, yes.

Q. All that took place after the Judge said, "Have I overlooked anything or are there any corrections?"

A. If that is what the record says, I agree with it.

Q. It was thereafter that Judge Biester—at that time Mr. Biester was District Attorney—made some statement to the Court, is that right?

Atty. Willard S. Curtin—Cross

A. Well, that is my recollection that after Mr. Achey said that the Court said something further, and then Judge Biester said something.

Q. All right. How did Judge Biester—where was Judge Biester standing when he addressed the Court?

A. Before the bar, the railing immediately —

Q. Like this bench is here, right in front of the Judge?

A. Yes.

Q. Is that right?



(779-780) A. That is right.

Q. And when did he move over there?

A. Well, he got up from—as I recall it, he got up from where he was seated alongside of me and stepped forward maybe three, four feet and he was right there.

Q. Do you mean to say there was only three or four feet from where he was seated to the position he assumed in addressing the Court or trying to get the Court's attention?

A. At that time, yes. He moved right over to that railing immediately in front, and from where he was seated it was only three or four feet.

Q. And that would be the end of it?

A. No. It would be about two-thirds of the way down from the one end. No, just a little beyond the middle I would say; just a little beyond the middle.

Q. He went a little beyond the middle of the bench and faced Judge Keller?

A. Well, he stepped—he stood up from where he was sitting and walked over to that spot which put him just a little beyond the middle from it to the end of that bench.

Q. Did he stand there for any time before he was recognized by the Court?

A. Now, my recollection as to that, sir, is that there was maybe a minute or two until Judge Keller had completed whatever (781) he was saying, and then when he had

stopped then Judge Biester, the District Attorney Biester made some suggestions.

Q. Made some suggestions, and do you remember what he said?

A. I am sorry, sir. I don't remember his words. Again it is my recollection that he asked the Court—thought that the Court had overlooked and asked to charge or something, but I could be wrong on that.

Q. Will you state whether or not you and the District Attorney conferred before he went to the bench to attract the attention of the Court?

A. It is my recollection that we did, sir, in whispers because throughout the charge we were whispering back and forth, yes.

Q. Do you remember what you talked about?

A. No. I do not. We would comment on the features of the Judge's charge as he delivered it, but just what those comments were I don't remember.

Q. Was anything said concerning calling certain matters to the Judge's attention?

A. Again it is my recollection before Judge Biester got up we had discussed something we felt the Court had overlooked, and as a result of that Judge Biester did get up.

Q. Do you remember what you thought the Court had overlooked in its charge?

A. I have no idea what that particular feature was.

(782) Q. Did you discuss with Judge Biester—at that time the District Attorney of your county—any question concerning the burden of proof?

A. I said, Mr. Margiotti, I don't remember what we whispered about between ourselves during that or immediately before he got up and addressed the Court. I haven't any recollection of what, but we talked about something.

Q. Judge Biester also took a position back in that section of the court room during trials?

A. You mean he would sit back there? No, not

JUDGE MURPHY: Just a minute, please. Where is back there?

MR. MARGIOTTE: Back where he was seated at this time according to the witness, which he said was in front of the newspaper reporters' table.

THE COURT: Read the question as supplemented?

(Record read.)

THE WITNESS: No. He didn't because he was actively trying the case. The only times that he left the Commonwealth's table as I recall—of course, he wasn't there during recesses but during the actual trial, during the time that I was reading the confession, and during the charge of the Court; during the rest of the time he was actively engaged in examining the witnesses.

(783) BY MR. MARGIOTTE:

Q. As a general proposition did you see the chair or the— with an inscription in front of it in Relator's Exhibit 135, marked "Judge Boyer"?

A. What do you mean did I see the chair?

Q. Did you see it in the exhibit?

A. Yes.

Q. Did Mr. Biester at that time have a habit of occupying chairs back there where that is, where that inscription is?

A. During the trial?

Q. During any time—during the trial?

A. During the trial if —

JUDGE MURPHY: Just a minute. Which question are you asking?

Q. During the trial.

A. During the trial he didn't sit to the best of my recollection.

Q. Well, during the charges?

A. During the charge there was only one—during the charge he sat where I told you.

Q. I am talking about generally speaking during the charges?

A. You mean in other cases?

MR. VAN ARTSDALEN: If the Court please, I object. I object to the question.

(784) JUDGE MURPHY: We will take it. The question is: At any time during a charge in some other case or cases do you recall Judge Biester, who was the trial lawyer, sitting back in a seat marked Judge Boyer on the exhibit on the table, not before the witness?

MR. MARGIOTTI: That is right. That is the question.

THE WITNESS: I wouldn't know. I would suppose sometime in the course of some trial he may have sat in one of those chairs. I don't have any recollection of it, but it could happen.

Q. Did you hear what Judge Biester said to Judge Keller?

Atty. Willard S. Curtin—Cross

A. You mean when he got up and made the remark that I have mentioned?

Q. Yes.

A. I heard it at the time but I don't recall the exact phraseology at this time.

Q. Did he talk more than once or was it one continuous statement?

A. As to that, Mr. Margiotti, I don't know. It could have been that Judge Keller answered him and then he answered Judge Keller. Whether it was one statement or not I don't know. I wouldn't want to say.

Q. Now, when Mr. Achey objected to Judge Boyer's sitting on (785) this case, do you remember Judge Boyer saying that judges reserve the right to confer without being obligated to get the consent of the defense counsel?

A. As I explained to you, Mr. Margiotti, I wasn't at sidebar, and from where I was sitting we could not hear what was said.

Q. I see. All right.

A. But I only know what Judge Biester told me and what I later read in the record.

Q. Do you know whether or not, after that objection was made, whether Judge Boyer immediately left the bench or whether he remained there for a while?

A. My recollection is, sir, that he did remain there for some short time thereafter, a few minutes; not too long; five, ten minutes perhaps.

Q. Didn't he remain until almost the close of that session?

A. He could have because I am not too sure how late in the morning it was, and I think it was in the morning that that occurred.

Q. I see. All right. Were you present in court after the Foster-Zietz trial?

A. How long after?

Q. Oh, I would say within a half hour.

A. I was present in court. You mean after the verdict was brought in or at the conclusion of the charge, or what?

(786) Q. After the verdict.

A. Yes.

Q. Did you see the newspaper which quoted Judge Boyer as commending the jury on its verdict?

A. Did I see the reporters?

Q. Did you see the newspapers?

A. I may have read the Intelligencer's account of that—account of the bringing in of the verdict. I don't remember what was in it.

Q. I was trying to shorten it, but I think I will try to get the paper. I call your attention to Belator's Exhibit 78, and particularly to the story that appears on the right-hand side: "Judge Boyer Praises Jury For Verdict Condemning 2 Killers To Electric Chair." (Hanging.) Did you see that story?

A. I believe I did.

Q. Did you see it the day that paper was issued which I understand was Saturday, June 5?

A. I think so, that I probably saw it the following Monday morning. We took the Intelligencer, and it was sent to our Morrisville office, and we generally got it to the next morning after it was published.

Q. Were you in court or were you present at any time when such a statement was made by Judge Boyer?

A. I was in court when the jury came in and I was in court (787) until the jury was excused. I was, however, quite busy at that time to make sure that we had all the exhibits in such shape so that we could use it for the next trial, checking the exhibits. I probably went into the jury room to see if there were any there. So I probably went in

and out of the door at that time. I have no definite recollection of Judge Boyer talking to the jury afterwards.

Q. Well, have you any recollection, definite or otherwise?

A. Yes. He talked to the jury.

Q. What did he say to the jury?

A. That I do not know because I say I was in and out and I was gathering up the exhibits. I was quite busy because I knew it was very important that they were in good shape for the following trial.

Q. Who was in good shape?

A. The exhibits we had, to be good for the trial that was going to follow.

MR. MARGIOTTI: If the Court please, I am through with the cross-examination except that I would like to have the witness remain for something else that I would like to ask him about. I do not have the papers here, and I would prefer not to ask the questions unless I have the papers before me.

JUDGE MURPHY: I understand that cross-examination is concluded, and Mr. Curtin, you are requested to remain a bit (788) longer.

MR. MARGIOTTI: He does not mind to be up here.

THE WITNESS: I have other places I would rather be than here.

RE-DIRECT EXAMINATION

BY MR. VAN ARTSDALE

Q. Mr. Curtin, do you know whether or not when a juror is excused, whether that juror must appear in open court?

A. No. The practice in Bucks County is that the persons desiring to be excused get in touch generally by letter with Judge Keller, who is the only one who excuses jurors, and that is during any time from the time they receive their original summons up until the time they appear. Then it is Judge Keller's practice to have a letter sent to those people telling them they are excused or not excused, and if they are excused they do not appear in court at all.

Q. You have stated, I believe, that Raymond Allen was the sheriff of Bucks County at the time of the Darcy trial. Do you know where Mr. Allen is at the present time?

A. No. I don't.

Q. Is he any longer the sheriff of Bucks County?

A. No. He is no longer the sheriff of Bucks County.

Q. Who was the Deputy Sheriff?

A. Harry Knox.

(789-90) Q. Where is he?

A. Harry Knox suffered a series of severe strokes, and is mentally incapacitated—mentally and physically.

Q. Mr. Curtin, your attention is called to an article appearing in the Intelligencer of May 14. Do you have any knowledge of anyone giving that story to the paper?

A. Which article is that, sir?

Q. I refer to Relator's Exhibits 51 and 52. (handing)

A. I am not sure what you want to direct my attention to on 52, Mr. Van Artsdalen.

Q. Well, Relator's Exhibit 52 is really a continuation of the article that appears in Relator's 51, is that correct, sir?

A. That is correct. I have no knowledge where they got the information that shows in that newspaper article. I didn't give it to them.

Q. Mr. Curtin, you stated that in the sidebar conference you indicated your position. Can you state whether you were closer to the place where that sidebar conference took place than any members of the jury were?

Atty. Willard S. Curtin—Re-cross

A. I would say that my position was just about the same distance from the—where that conversation took place as juror No. 1, and Juror No. 1 would be the juror nearest me. The two of us were about equidistant from where Mr. Achey and District (791) Attorney Diester was standing in front between Judge Keller and Judge Boyer.

MR. VAN ARTSDALEN: That is all, sir.

RE-CROSS EXAMINATION.

BY MR. MARGIOTTI:

Q. Just a minute, Mr. Curtin. The District Attorney has called your attention to an article of May 14. When did that first come to your attention?

A. The article?

Q. Yes.

A. I would say that that paper would be delivered to my office in Morrisville or come through the mail the following day.

Q. The following day. Did you read the article?

A. I probably saw it.

Q. Did you call the Doylestown Intelligencer to correct it?

A. No.

Q. What is that?

A. No.

Q. Did you do anything to correct the impression made in that article?

A. No.

MR. MARGIOTTI: That is all.

Atty. Willard S. Curtin—Re-direct
Ernest M. Leedom—Direct

RE-DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

(792) Q. May I ask one other question, Mr. Curtin? Had you had occasion prior to that to observe inaccuracies by reporters of newspapers?

A. Yes.

Q. Did you ever call the attention of those facts or inaccuracies to the reporter?

A. No. We did not.

MR. VAN ARTSDALEN: Yes. That is all.

(Witness excused.)

(793) ERNEST M. LEEDOM, called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Leedom, where do you reside?

A. Southampton, Pennsylvania.

Q. What is your occupation?

A. Deputy Controller of Bucks County.

Q. Southampton is that in Bucks County?

A. Yes, sir.

Q. Do you have with you the receipts for the pay received by all jurors from May 24 through June 15?

A. I do.

Q. Do you have with you the attendance records of all jurors between those days?

A. Yes, sir.

Q. Do you have with you the original pay records signed by the Clerk of Court?

A. I do.

MR. MARGIOTTI: The original what? May I have that question read?

JUDGE MURPHY: Just a minute please. Mr. Reporter, will you read the question back, please?

(794) (Question read.)

JUDGE MURPHY: Just a minute, please. It hasn't been answered. Oh, it has. What is the answer?

(Answer read.)

JUDGE MURPHY: Proceed.

BY MR. VAN ARTSDALEN:

Q. Mr. Leedom, referring to your records, will you tell us, please, what receipt, if any, you have for W. D. Pardoe?

MR. MARGIOTTI: I object to the witness reading the contents of the document, as the document is the best evidence.

JUDGE MURPHY: He asked what receipt he has, and I assume he is going to produce a paper, if any.

MR. MARGIOTTI: If he does that-I have no objection. Maybe I am anticipating.

Ernest M. Leedom—Direct

THE WITNESS: I have a record here for two days of eight dollars.

MR. MARGIOTTI: Now, if Your Honor please, I object to the contents of these papers.

JUDGE MURPHY: Are you going to lay the groundwork and offer them in evidence or not, sir?

MR. VAN ARTSDALEN: Yes. We at this time offer them in evidence.

JUDGE MURPHY: Are you going to show it is kept in the regular course of business in compliance with the statute (795) and whether it is the regular course of business to keep it, and did he take it from the place where it was kept and bring it here? Then offer it.

BY MR. VAN ARTSDALEN:

Q. Mr. Leedom, are you the custodian of the records that you have there?

A. I am.

Q. Are they official records of the County of Bucks?

A. They are.

Q. Where are they kept?

A. In the Controller's office.

Q. May I have it? (Witness hands papers to counsel.) Mark this exhibit, please. (Addressing the Clerk.)

JUDGE MURPHY: We will have the relator's exhibits marked R-1, 2, 3, 4 and 5. I beg your pardon... The Commonwealth's—we have already had the relator's—1, 2, 3, 4, and 5. Is it Relator, or what?

Ernest M. Leedom—Direct

MR. QYDER: I tried to make it clear the other day that the state is the respondent. It doesn't make any difference, either Respondent's or the State's.

JUDGE MURPHY: It will be the Respondent's Exhibit No. 1.

(The document above-referred to was marked for identification Respondent's Exhibit No. 1.)

(796) BY MR. ARTSDALEN:

Q. Mr. Leedom, I show you what has been marked as Respondent's Exhibit No. 1, and ask you what that exhibit is?

A. These are the original receipts signed by the jurors for their recompense for the days served.

Q. And over what period of time does that cover?

A. Monday, June 7, 1948 to and including June 14, 1948.

Q. All right, sir. Now, do you have any other records with you. I will withdraw that question until this exhibit is marked, please.

(The document above-referred to was marked for identification Respondent's Exhibit No. 2.)

JUDGE MURPHY: Mr. Leedom, were those records, particularly Exhibit 1, kept in the usual course of business?

THE WITNESS: Yes, sir.

JUDGE MURPHY: And was it the usual course of business to keep such records?

THE WITNESS: As these? (Indicating.)

Ernest M. Leedom—Direct

JUDGE MURPHY: Yes.

THE WITNESS: Yes, sir.

BY MR. ARTSDALEN:

Q. Mr. Leedom, I show you Respondent's Exhibit No. 2 and ask you what that contains, please?

A. That is the record of the jurors paid for the weeks (797) starting May 24, 1948 to and including Friday, June 4, 1948. Also the attendance record is attached of the days that the jurors served.

Q. And referring again, please, to Respondent's Exhibit No. 1, is there also an attendance record there?

A. That is correct.

Q. And what period of time does that attendance record cover?

A. June 7, 1948 to and including June 14, 1948.

Q. Do you have any other records here with you?

A. I have the original authorization for the payment of the jurors from the Clerk of Courts.

Q. And are they kept in your office in the usual course of business?

A. That is correct.

Q. Are they part of the official records of the County of Bucks?

A. That is correct.

MR. VAN ARTSDALEN: I think that I have one of those left to be marked individually.

JUDGE MURPHY: It is your choice, sir. We have already marked Respondent's Exhibits Nos. 1 and 2. What is the next situation? If they have some connection with each other they should be marked 3-A, B, C, and so forth.

Ernest M. Leedom - Direct

MR. VAN ARTSDALEN: Let me look at these just a (798) second, please.

BY MR. ARTSDALEN:

Q. Mr. Leedom just to clear up one point first—you have these warrants in two separate groups?

A. That is right.

Q. What is the reason for their being in two separate groups?

A. One is the Foster, Zeitz murder jury, and the other is the Darcy murder jury.

MR. VAN ARTSDALEN: Please mark these. (Addressing the clerk.)

JUDGE MURPHY: Just to keep the sequence, the Foster, Zeitz will be marked 3 and Darcy marked 4.

MR. ARTSDALEN: While they are being marked, I should like to offer in evidence, Your Honor, Respondent's Exhibit No. 1 and Respondent's Exhibit No. 2.

MR. MARGIOTTI: If Your Honor please, may we ask that the Court defer ruling on the exhibits until we are given an opportunity to cross-examine.

JUDGE MURPHY: We will afford you that opportunity right now.

MR. MARGIOTTI: Thank you, judge.

JUDGE MURPHY: As to this question only.

MR. MARGIOTTI: What is that?

JUDGE MURPHY: As to this question only.

(799) MR. MARGIOTTI: Yes. That is right.

BY MR. MARGIOTTI:

Q. Mr. Leedom, have you brought here all the basic papers in the papers that you have presented?

A. As far as I know.

Q. Didn't the jurors have what is known as a punch card system? Wasn't there a punch card system in your court at that time?

A. If they did it was taken care of in the Clerk's Office, and that original voucher authorizing payment was made from that card by the Clerk of Courts.

Q. In other words, that voucher would be made from a punch card?

A. That would be my understanding. They have a card punched each day, correct?

Q. The juror then had a card and every day that he appeared in court somebody punched that card?

A. That is my understanding, although it does not concern my office.

Q. I understand that, and that card—have you ever seen one of the cards, the jurors' cards?

A. Oh, I believe I have.

Q. What is it like?

A. It is a small card about four and a half to five, maybe (800) not quite that large either. It is a smaller card than that.

Q. And when does a juror get that card?

A. I am afraid I couldn't answer that question.

Q. And who does the punching?

MR. VAN ARTSDALEN: If the Court please, I think he has already —

JUDGE MURPHY: If he knows. Do you know who does the punching? Is the question. Did you ever see it done?

THE WITNESS: Yes, sir.

JUDGE MURPHY: All right. Then you can answer the question.

THE WITNESS: It depends on the type of court. Some are done by the Clerk of Court; others are done by the Prothonotary's Office if it is a civil case.

BY MR. MARGIOTTI:

Q. Do those cards bear dates? —

A. I couldn't answer that.

Q. Do they bear the days of the weeks, that is, Monday written on?

A. I have never examined a card that closely.

Q. Where were these holes punched on the card? Was it just a hole punched?

A. I presume that it is a regular attendance record which the Clerk of Courts has and submits to the juror when they start (801) serving.

Q. When the juror is through with his service, what is done with his card?

A. That is up to the Clerk of Courts.

Q. Do you know whether it is turned in to the Clerk of Courts?

A. I don't know.

Q. Didn't you say a moment ago that the pay warrants are based upon that card?

A. I would presume that was so, either that or the attendance records.

Q. Well, then, on these cards, these exhibits that you have before the Court at this time, there are check marks under various days of the week. Do you notice that?

A. Yes, sir.

Q. Where does that information come from?

A. From the Clerk of Courts' office. They keep the record.

Q. They keep that record; you don't keep it?

A. No, sir.

Q. So that this is not a record in your own office?

A. It is kept in our own office along with the exhibits.

Q. In other words, the Clerk of Courts makes it and sends it over to you?

A. It is supposed to substantiate those payments.

Q. Then upon what the Clerk of Courts' office sends over to (802) you, you make the payments?

A. That is correct.

Q. Do you remember being subpoenaed by the Relator—at least in behalf of the Relator in this case?

A. Yes, sir.

Q. And you came here?

A. Yes, sir.

Q. Do you remember being asked to obtain the original cards, the basic information, the punch cards; do you remember that?

A. No. I do not.

Q. Well, at any rate, you did not bring them?

A. That is correct. They are not kept in my office.

Q. And you did not have them?

A. No, sir.

Q. What you got from the Clerk's Office is this traverse jury list, this long list here?

A. Along with the original.

Q. Original what?

A. Authorization to pay these jurors.

MR. MARGIOTTI: Will you give me the top paper?

(Addressing the Clerk.)

• BY MR. MARGIOTTI:

Q. And by that you mean Respondent's Exhibit No. 4, which is your authorization?

(S03) JUDGE MURPHY: Read the question, Mr. Reporter. (Question read.)

BY MR. MARGIOTTI:

Q. Just answer the question.

A. Yes.

Q. Now, then, you have here pay vouchers, a copy of them, I assume, or are they originals?

A. They are the originals, signed by the principal themselves upon the receipt of their payments.

JUDGE MURPHY: Let the record show that the Clerk handed to Mr. Margiotti a group of papers, the first one of which is marked Respondent's Exhibit 4-A. The other group of papers, beginning with Respondent's Exhibit No. 3-A, is on the Clerk's desk.

(Group of documents was marked for identification Respondent's Exhibits 3-A to Z, Z-1, Z-2, Z-3, inclusive.)

(Group of documents was marked for identification Respondent's Exhibits 4-A to Z, Z-1, Z-2, Z-3, inclusive.)

BY MR. MARGIOTTI:

Q. Now, these vouchers for pay do not show the particular days that a juror was in attendance, do they?

A. No. That is correct.

Q. And the authorizations which the Court has just referred to, and I think they are marked Respondent's 4-A and Respondent's (804) 3-A—merely give the number of days but do not show what days?

A. That is correct.

Q. Now, the only place where you do have the days is a paper that comes from some other office?

A. That is right.

Q. And which you keep in the course of your business, and that is this long paper attached to Respondent's Exhibit No. 1, and being headed "Traverse Jury List"?

A. That is right.

Q. This paper is not made up in your office?

A. No, sir.

Q. It is this paper that you say is made up from these cards, that are punched?

A. Not being in that office, I can't definitely say that.

Q. I see. You do not know?

A. I have no way of knowing. That is correct.

Q. You do not know where this information comes from?

A. From the Clerk of Courts.

Q. You do not know how the Clerk of Courts keeps this or where he gets the information, do you?

A. From the daily accounts.

JUDGE MURPHY: Do you know of your own knowledge? is the question. Do you work in the Clerk's of Courts Office?

THE WITNESS: No, sir.

(805) JUDGE MURPHY: Do you know where they get the

information when they do it? Do you know of your own knowledge?— is the question.

THE WITNESS: Having served on the jury myself, it has been necessary to turn your card in the day that you served on the jury in the Clerk of Courts.

BY MR. MARGIOTTI:

Q. Your punch card showed the number of days you attended?

A. And they took the card the day you attended.

Q. And each hole showed the day you attended, is that right?

A. That is right.

Q. You know nothing about how this long sheet is kept by the Clerk, do you?

A. No.

MR. MARGIOTTI: At this time we object to the offer for the reason that they are not properly proved.

JUDGE MURPHY: The objection is overruled, and they will be received in evidence as records of the office in which they are kept after they come to the point of payment and payment is made. They will be received.

(Respondent's Exhibits Nos. 1 and 2, respectively, heretofore marked for identification, were received in evidence.)

JUDGE MURPHY: We will recess until 2 o'clock at which time the witness will be on direct examination.

806 (Luncheon-Recess.)

Ernest M. Leedom—Direct

AFTERNOON SESSION

(The Relator, David Darcy, present in court.)

JUDGE MURPHY: So that the record will be clear, the ruling of the Court immediately before the noon recess was as to the offer of Respondent's Exhibits Nos. 1 and 2, that the objections were overruled, and Respondent's Exhibits Nos. 1 and 2 are received in evidence.

MR. VAN ARTSDALEN: Thank you, sir.

MR. MARGIOTTI: Your Honor, has No. 3 and 4 been offered?

JUDGE MURPHY: They have not been offered according to our recollection, but the record is the best evidence.

ERNEST M. LEEDOM resumed the stand, and testified further as follows:

DIRECT EXAMINATION (Continued).

BY MR. VAN ARTSDALEN:

Q. Mr. Leedom, I show you what has been marked as Respondent's Exhibit No. 3 and ask you what those papers are, please?

A. They are the original order from the Quarter Sessions to pay the jurors for their services. There are two authorizations (807) for each juror due to the fact that they serve six days in different weeks.

Ernest M. Leedom—Direct

Q. Now, the Exhibit No. 3 that you have there in your hand, Mr. Leedom, for what jury was that?

A. It was the Foster, Zietz jury.

JUDGE MURPHY: Mr. Reporter, will you read that question and answer?

(Record read.)

BY MR. VAN ARTSDALEN:

Q. There are how many separate sheets of paper, sir?

A. (Counting.) 28.

JUDGE MURPHY: How many?

(Answer read.)

BY MR. VAN ARTSDALEN:

Q. Will you kindly keep your voice up, Mr. Leedom? I now show you Respondent's Exhibit No. 4 and ask you what that is, please?

A. They are the authorizations from the Quarter Sessions to pay the jurors in the Darcy case. There are also two receipts for each juror—two authorizations, rather.

Q. And how many do you have there in Exhibit 4 altogether, sir?

A. 28.

Q. Where have these exhibits been kept prior to their coming here?

A. In the Controller's Office.

(808) Q. Are they part of the regular business records of the Controller's Office?

A. Yes, they are.

Q. Do they comprise part of the official records of that office?

A. That is correct.

Q. Are you the custodian of those records?

A. Yes, sir.

MR. VAN ARTSDALEN: If the Court please, I wish to offer in evidence Respondent's Exhibit No. 3, including No. 3-A through 3-Z, and Z-1, 2 and 3.

MR. MARGIOTTI: If Your Honor please, for the record I wish to enter an objection for the reason that they are not complete, and they are based upon punch cards of the jurors which are not in evidence and have not been offered in evidence, and there is no statement from the District Attorney that they will be offered in evidence.

JUDGE MURPHY: The objection is overruled. Exhibit No. 3 as identified will be received in evidence.

(Documents heretofore marked for identification Respondent's Exhibits Nos. 3-A to Z, and Z-1, 2 and 3, inclusive, were received in evidence.)

MR. VAN ARTSDALEN: If the Court please, I wish to offer in evidence Respondent's Exhibit No. 4, being a series (809) of papers, Respondent's Exhibits 4-A through 4-Z-1, 4-Z-2, and 4-Z-3.

MR. MARGIOTTI: If Your Honor please, may I have the same objection noted as to No. 3?

JUDGE MURPHY: The objection is overruled. They will be received in evidence as identified in the offer.

(Documents heretofore marked for identification Respondent's Exhibits Nos. 4-A to 4-Z, and Z-1, Z-2, and Z-3, were received in evidence.)

BY MR. VAN ARTSDALEN:

Q. Now, Mr. Leedom, referring to Respondent's Exhibit No. 1, will you tell us, please, what those records show as to the attendance of W. D. Pardoe?

A. You mean the number of days or the receipt?

Q. Referring to the receipt.

A. According to the first receipt he was paid—Mr. Pardoe was paid for five days, June 7, 8, 9, 10, 11 and 12. On the second receipt he was paid for two days, June 13 and 14.

Q. All right, sir. I want to ask you what the receipts indicate as to Anna W. Bucher—the receipts and the records?

A. The receipts show Anna Bucher was paid for June 7, 8, 9, 10, 11, 12 on one receipt, and on the other receipt she was paid for June 13 and 14.

Q. I refer now to Marvin D. Weidner.

(810) A. Weidner was paid on one receipt for June 7, 8, 9, 10, 11 and 12 of 1948, and for two days, June 13 and 14 of 1948.

Q. Jesse H. Horne.

A. Jesse H. Horne was paid for six days, June 7, 8, 9, 10, 11 and 12, on one receipt, and on the other he was paid for June 13 and 14, 1948 on another receipt.

Q. Oliver C. Landis.

A. Oliver C. Landis was paid on a receipt for June 7, 8, 9, 10, 11 and 12 of 1948, and June 13 and 14 1948 on another receipt.

Q. Franklin T. Fretz.

A. Franklin T. Fretz was paid for June 7, 8, 9, 10, 11 and 12, 1948 on one receipt, and on another receipt, June 13 and 14, 1948.

Q. Roger Mason.

A. Roger Mason was paid for June 7, 8, 9, 10, 11, and 12, 1948 on one receipt, and for June 13 and 14, 1948 on another receipt.

Q. Ruth G. Bliss.

A. Ruth G. Bliss was paid for June 7, 8, 9, 10, 11, 12, 1948, and on another receipt for June 13 and 14, 1948.

Q. Ann L. Reed?

A. Ann L. Reed was paid for June 7, 8, 9, 10, 11, 12, 1948 on one receipt and June 13 and 14, 1948 on another receipt.

(811) Q. William F. Hickey.

A. William F. Hickey was paid for June 7, 8, 9, 10, 11, 12, 1948 on one receipt and for June 13 and 14, 1948 on another receipt.

Q. Virginia Brillman.

A. Virginia Brillman was paid for June 7, 8, 9, 10, 11, 12, 1948 on one receipt and for June 13 and 14, 1948 on another receipt.

Q. Mr. Leedom, have you examined the records between May 24 and June 15 to ascertain whether any of those persons whose names I have just called, were paid for any other days during that period of time?

MR. MARGIOTTI: What date?

BY MR. VAN ARTSDALEN:

Q. Between May 24 and June 15 other than the dates you have just referred to?

A. What was that? Give me the date again, please?

Q. Between the date of May 24 and June 15, I will withdraw the question and rephrase it.

Mr. Leedom, have you examined all of the receipts between May 24 and June 15?

A. I have.

Ernest M. Leedom—Direct

Q. And have you ascertained whether or not any of these fourteen persons whose names I have just called off and you referred (812) to, were paid between May 24 and June 15 for any times or any amounts of days other than those you have just testified to?

A. They have not been.

Q. And did you make an examination of the records for that purpose?

A. I did.

Q. Mr. Leedom, referring again to Respondent's Exhibit No. 4, there is a name that appears on those, is that correct—the signature on those exhibits?

A. That is correct, yes, sir.

Q. Will you just examine them quickly and tell me whose signatures appear on those?

A. Matthew L. Godshall, Clerk of Quarter Sessions.

Q. Have you examined them all and are you acquainted with his signature?

A. Yes, sir.

Q. Do they also contain the seal of the Court of Quarter Sessions?

A. That is correct.

Q. All right. Now, I want to refer to Respondent's Exhibit No. 3, and ask you what names or signatures if any appear there?

A. Matthew L. Godshall, Clerk of Quarter Sessions and Walter C. Schroeder, Deputy Clerk of Quarter Sessions.

(813) Q. Are you familiar with both of their handwriting?

A. Yes, sir.

Q. And are they their signatures?

A. Yes, sir.

Q. And do they contain the seal of the Court of Quarter Sessions?

A. Yes, sir.

Q. Now, referring to Respondent's Exhibits No. 1, I refer you, sir, to the attendance sheet attached thereto, and ask you whether there is any signature at the bottom thereof?

A. Signed by Matthew L. Godshall, Clerk.

Q. Are you familiar with his signature?

A. Yes, sir.

Q. Is that his signature?

A. It is.

Q. Does the seal of the Court of Quarter Sessions appear thereon?

A. It does.

Q. I refer you, sir, also in Respondent's Exhibit No. 1 to another attendance sheet, and ask you whether there is a signature attached to the bottom of that?

A. Signed by Walter C. Schroeder, Deputy Clerk.

Q. Is that the signature of Walter C. Schroeder?

A. It is.

(814) Q. And is the seal of the Court of Quarter Sessions attached thereto?

A. It is.

Q. I refer you, sir, to Respondent's Exhibit No. 2, and refer you to the bottom of the attendance sheet or the first attendance sheet attached to that exhibit, and ask you whose signature if any appears on the bottom?

A. Signed by Matthew L. Godshall, Clerk.

Q. And is that his signature?

A. It is.

Q. Is the seal of the Court of Quarter Sessions attached thereto?

A. Yes.

Q. I show you the second sheet of Respondent's Exhibit No. 2, the second attendance sheet, and ask you whose signature is affixed to the bottom thereof?

A. Walter C. Schroeder, Deputy Clerk.

Q. That is his signature, sir?

A. It is.

Q. And is the seal of the Court of Quarter Sessions attached thereto?

A. It is.

MR. VAN ARTSDALEN: Cross-examine.

(815) CROSS-EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Leedom, you said that you examined the records in order to ascertain whether there had been any payments made between May 24 and, I believe, the date of June

MR. VAN ARTSDALEN: The 15th.

BY MR. MARGIOTTI:

Q. 15. Do you remember that question and answer?

A. Not that direct question.

Q. Well, do you remember that you said that you did examine the records in order to ascertain whether there had been any payments made between May 24, 1948 and June 15?

A. Other than the murder jury.

Q. What is that?

A. The question was other than the murder jury.

Q. I didn't know that was inserted in the question.

JUDGE WATSON: Other than those names mentioned, that was the question. That is my recollection, but you can have it read if you like.

MR. MARGIOTTI: I am not trying to be dishonest with the Court or the witness.

JUDGE WATSON: I know you are not. I won't interrupt you. I thought I was going to save a little time.

MR. MARGIOTTI: I do not mind interruptions, Your Honor.

(816) BY MR. MARGIOTTI:

Q. You said you examined what records between May 24 and June 15—other than the murder jury I think you said?

A. That is correct.

Q. Now what records did you examine?

A. All of the records.

Q. What records? Identify them.

A. The jurors who served between May 24 and also up to June 14.

Q. And also what?

A. Up to and including the 14th of June, 1948.

Q. From May 24 to June 14, inclusive?

A. Yes, sir.

Q. Are those records here? Are the records that you examined all in evidence?

A. They are right here. Yes, they are offered in evidence.

Q. So that any records you examined are already in evidence here, it wasn't that you examined some other records that we don't have here in court?

A. No.

Q. All right, and you also were asked if you examined all receipts as to whether there were payments between May 24 and June 15, do you remember that?

A. Yes, sir.

(S17) Q. Now, what receipts did you examine?

A. I examined all the receipts which I have here.

Q. Which you have here?

A. Yes, sir.

Q. But nothing outside of what is in court and is in evidence?

A. Well, these receipts covering these periods.

Q. I understand that but everything is here?

A. As far as I know.

Q. All right. That is what I wanted to get at. Now, on the date of June 1, 1948 you would expect to find any records concerning that date in Respondent's Exhibit No. 2, which is the one that starts with May 24th, is that right? Wouldn't you? Do you understand the question, Mr. Leedom?

A. Not exactly.

Q. Wherein in these two exhibits, Exhibit No. 1 and Exhibit No. 2 of the Respondent, would you find the date of June 1?

A. It is on there under June 1 of the jurors that served June 1.

Q. Would you like to look at them? I will bring them up there.

A. Yes.

Q. All right. (Handing.)

A. June 1, 2, 3, and 4.

JUDGE MURPHY: For the record, it is the Court's understanding that Respondent's Exhibit No. 1 covers the dates (S18) from June 8 to June 14, and no other dates.

THE WITNESS: It is No. 2.

JUDGE MURPHY: And Respondent's Exhibit No. 2 covers from 5-24-48 to 6-4-48, and no other dates.

MR. MARGIOTTI: That is correct.

BY MR. MARGIOTTI:

Q. Now, if the jurors came in on a specific day, to wit June 1, 1948 and were sent home that day, where would there be any record made of that?

A. The record would be made that the County would be liable for the pay, or the court is liable for the pay for that day if they appeared.

Q. Well, would there be any record made for it?

A. Certainly not in the controller's office.

Q. Well, in whose office would it be?

A. The branch of the court's.

Q. What is that?

A. A branch of the court's.

Q. What branch of the court?

A. I presume it would be the Clerk of Quarter Sessions Office.

Q. That would be Mr. Godshall's office?

A. That is right.

Q. And you would not have it in Exhibit No. 1 and No. 2 would you?

(819) JUDGE MURPHY: Read that question, Mr. Reporter.

(Question read.)

JUDGE MURPHY: By "it" you mean what? We understand if they came in and were paid as of June 1, it would be in Exhibit No. 1 and 2. If they were not paid it would not appear in Exhibit No. 2. That is what we understand it, and the witness said he found there was no evidence that anybody was paid for that day.

MR. MARGIOTTI: If Your Honor please, there is evi-

dence here that someone returned on June 1 and some people were excused on that day.

JUDGE MURPHY: It is up to the Court to find the facts. The Court distinctly recalls what the testimony was.

MR. MARGIOTTI: I am pursuing the examination along that line.

THE COURT: You are perfectly free to pursue it as long as you desire.

BY MR. MARGIOTTI:

Q. If they came in and were sent home you said Mr. Godshall would keep a record of that?

A. That is not for me to say.

Q. Didn't you say that?

A. If Mr. Godshall kept a record of it we would have been authorized to pay the juror for coming in that day.

(S20) Q. If he kept a record of it and turned it over to you?

A. I suppose he turned it over to us for payment if they served that day.

JUDGE MURPHY: What we have in the record so far is proof, so far as this witness is concerned, of the usual course of business, that if they did turn up or show up they should be paid. If they were paid they could only be paid by the Clerk of Quarter Sessions certifying it on a certificate paper, and they would be paid by the Controller, and if they were paid they should have a receipt, and he finds no receipts and no attendance records of any kind to show any appearance on June 1.

MR. MARGIOTTI: But, if Your Honor please, the rec-

ords show, according to my contention. I may be wrong that they were there June 1. They could have been excused. They could have been turned in for payment. They may have neglected to do so and they weren't paid.

JUDGE MURPHY: I believe we could indulge in a number of assumptions, and we will find the facts on the record before us.

BY MR. MARGIOTTI:

Q. Where is Mr. Godshall now?

A. Mr. Godshall lives in Doylestown. He is out of office at the present time.

JUDGE MURPHY: May we inquire, was not Mr. Godshall (S21) excused by you?

MR. MARGIOTTI: We had him here as a witness, and he testified and he went home, but there is no reason that the Commonwealth cannot call him if they want him. I haven't a monopoly on witnesses.

JUDGE MURPHY: No.

BY MR. MARGIOTTI:

Q. When you were subpoenaed by the Relator in this case and you appeared here in court, did Judge Pannell interrogate you, this gentleman to my left?

A. No, sir.

Q. Did you talk to him?

A. Yes, sir.

Q. That is what I meant by interrogating, and did you discuss—did you have some papers with you?

Ernest M. Leedom—Cross

A. I did.

Q. Did you have these papers with you that you have now?

A. Yes, sir.

Q. All of them?

A. All except these authorizations from the court or the Clerk of the Court for payments. I have the payroll records and the receipts I had here.

Q. Did you have that long sheet, Mr. Leedom?

A. These complete, both of them.

(S22) JUDGE MURPHY: By "this complete," the witness is holding in his hand Respondent's Exhibit No. —

THE WITNESS: No. 1 and No. 2, I think.

JUDGE MURPHY: And No. 2?

THE WITNESS: Yes, sir.

BY MR. MARGIOTTI:

Q. That is the long sheet attached to both of them.

Do you yourself have any independent recollection of seeing any jurors that appeared on June 7 about the court house prior thereto?

MR. VAN ARTSDALEN: I object to that.

JUDGE MURPHY: Sustained as it stands. That covers almost fifty years, I take it.

MR. MARGIOTTI: Well, within the week before. I will limit it to a week.

Ernest M. Leedom—Re-direct

MR. VAN ARTSDALEN: I still object, Your Honor. I do not think it is proper cross-examination.

JUDGE MURPHY: We will permit it. As I understand it, you are now asked if you saw any jurors who appeared on the venire for the week of the Darcy trial and who actually appeared on the day of June 7—had you seen them in or about the court house prior thereto for a period of—how long?

MR. MARGIOTTI: One week.

JUDGE MURPHY: Of one week?

(S23) THE WITNESS: No. I did not.

JUDGE MURPHY: All right.

BY MR. MARGIOTTI:

Q. Do you know any of those jurors personally?

A. No, I do not, not a one of them.

MR. MARGIOTTI: That is all.

MR. VAN ARTSDALEN: If Your Honor please, there was one question I neglected to ask this witness.

RE-DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Leedom, do you know Raymond Allen?

A. Former Sheriff of Bucks County, yes, sir.

Ernest M. Leedom--Re;direct

JUDGE MURPHY: You did not neglect to ask him. You did ask well, go ahead. We will save time.

BY MR. VAN ARTSDALEN:

Q. Do you know where he is at the present time, sir?

A. I understand that he is in a mental hospital.

MR. VAN ARTSDALEN: We understood that the Deputy was in a mental hospital. Is the Sheriff there too?

THE WITNESS: No. The Deputy is at home. The Sheriff is in a mental hospital, the ex-sheriff.

MR. MARGIOTTI: Then Mr. Knox is back?

THE WITNESS: He has always been at home.

(S23-A) MR. MARGIOTTI: And he is still at home?

THE WITNESS: He is at home indisposed with a series of strokes he had a year ago.

MR. MARGIOTTI: I see.

JUDGE MURPHY: That means we have five dead and two others practically disposed of so far after this trial.

MR. VAN ARTSDALEN: That is all, sir.

(Witness excused.)

(824) MR. VAN ARTSDALEN: If the Court please, pursuant to Section 2245 of the Revised Judicial Code we wish to

Discussion

offer into evidence the certificate of Honorable Hiram H. Keller, trial Judge of this case.

JUDGE MURPHY: May I see it, please?

MR. VAN ARTSDALEN: Yes, sir. (Handing)

JUDGE MURPHY: That would be Relator's Exhibit Number —

MR. VAN ARTSDALEN: Respondent's Exhibit No. 5.

JUDGE MURPHY: Respondent's Exhibit No. 5.

(Document above-referred to was marked for identification Respondent's Exhibit No. 5.)

MR. VAN ARTSDALEN: I might add that that certificate was handed to me personally by Judge Keller.

JUDGE MURPHY: We will take a ten minute recess.

(Recess taken.)

(David Darey present in court.)

MR. VAN ARTSDALEN: If the Court please, we have a copy for the Court if they would care to have it. (Handing)

MR. MARGIOTTI: If you have a copy for us it will save a little time.

JUDGE MURPHY: Do you have a copy for the Relator's counsel?

Discussion

MR. VAN ARTSDALEN: We have one copy that we have for them.

(825) JUDGE MURPHY: Will you hand it to him?

MR. VAN ARTSDALEN: Yes, sir. (Handing)

JUDGE MURPHY: May the record note that in the presence of the Court Relator's counsel has been handed a copy.

(Recess taken.)

(David Darcy present in court.)

JUDGE MURPHY: As we understand it, there has been an offer of a paper which has been marked Respondent's Exhibit No. 5, and the Court makes this inquiry: Does the counsel for the Relator have any objection?

MR. MARGIOTTE: We do, Your Honor. We object to the certificate as such for the following reasons: In the first place, it is not a certificate in compliance with the act itself. Second, there is nothing before this Court to show that the certificate has been made in compliance with the act. Next, the certificate itself undertakes to discuss matters under oath relative to the ability of—for instance, under Paragraph No. 9, the certificate itself goes much further than is required by the act under which it is offered. In fact, it is not a certificate, but an affidavit of His Honor, Judge Keller.

Judge Keller presumably is in court and has been in court all day, and has been here since 10 o'clock this morning. I do not know, I have not been informed, therefore do not wish to state whether he is under subpoena or has appeared voluntarily. (826) I only know, he has been here, and the affidavit goes far beyond the provisions of the act. I think I have covered that.

Discussion

JUDGE MURPHY: Are you through, sir?

MR. MARGIOTTI: Just a minute, Your Honor. May I see the original, Your Honor? (Examining document) Furthermore, there is nothing on the certificate itself to show that copies of the certificate have been filed with the court in which the application—yes, in the court in which the trial took place.

JUDGE MURPHY: Are you through?

MR. MARGIOTTI: Yes, sir.

JUDGE MURPHY: It appears to this Court that the certificate in question has been offered in good faith, that it is the certificate of the trial Judge, and as we examine it, it is precisely on the questions that are in controversy before this Court. The objections are overruled. It will be received in evidence.

(Document heretofore marked for identification Respondent's Exhibit No. 5, was received in evidence.)

MR. VAN ARTSDALEN: May this be marked?

(Document above-referred to was marked for identification Respondent's Exhibit No. 6.)

MR. MARGIOTTI: Will the Court permit the record to show that the rulings were made at 3 o'clock, and the Judge has been here since 10 o'clock?

(S27) JUDGE MURPHY: It was made a minute and a half to 3 exactly.

MR. MARGIOTTI: And that he is still here?

JUDGE MURPHY: I do not know who is still here.

MR. MARGIOTTI: The Judge.

JUDGE MURPHY: I have never seen Judge Keller in my life. I do not know whether he is in the courtroom or not.

MR. MARGIOTTI: I guess we can agree that he is this fine gentleman. (Indicating.)

(Man arises in courtroom.)

JUDGE MURPHY: We are delighted to have you here, now that this gentleman is called to the Court's attention. We are delighted to have you here because you are a judge, and are delighted to have everybody here seeking justice.

MR. VAN ARTSDALEN: If the Court please, I desire to offer in evidence Relator's Exhibit No. 6, which is a certificate of Edward G. Biester, who is presently a judge of the Court of Common Pleas, Bucks County. We are offering this now under Section 2246 of the Revised Judicial Code. I might also add that this was given to me by Judge Biester, that Judge Biester is also in court, and has stated his willingness, if the Court sees fit, to testify. However, we did not feel it was proper for the Commonwealth to call a member of the judicial staff of the state of Pennsylvania, and I might also add, Your Honor, if (828) I may, that both Judge Keller and Judge Biester are here voluntarily, not under subpoena by the Commonwealth or by anyone else, but have appeared voluntarily.

JUDGE MURPHY: Now, first of all, do you have a copy for Relator's counsel?

MR. VAN ARTSDALEN: Unfortunately I do not.

Discussion

JUDGE MURPHY: Then we will have Relator's counsel examine it before the Court will.

(Mr. Margiotti examined document.)

JUDGE MURPHY: Do you now have a copy?

MR. VAN ARTSDALEN: I do, Your Honor. (Handing.)

JUDGE MURPHY: Let the record note that Relator's counsel has received a copy in open court.

As we understand the act in question, Section 2246 reads as follows:

"On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits."

We have now the offer on the part of the Respondent of Respondent's Exhibit No. 6, which purports to be an affidavit by one Edward G. Biester, who at the time of the trial in question was the District Attorney of Bucks County, Pennsylvania, and (S29) who thereafter was made a Judge of the Court of Common Pleas of Bucks County. The paper in question is offered then as the affidavit of one who was District Attorney and who now is a sitting Judge in Bucks County, Pennsylvania. Is there objection to the offer?

MR. MARGIOTTI: We object to the offer in evidence, Your Honor, for the reasons that Judge Biester has been in court since 10 o'clock this morning. It is now 3 o'clock in the afternoon, and he is available as a witness. As I understand it from the District Attorney he has appeared voluntarily and not under subpoena, and we feel that the affidavit should not

be received although it is within the discretion of the Court under this Act, and we feel that the Judge ought to take the stand.

JUDGE MURPHY: We will cross that bridge when we come to it. The Court's ruling is that the present objection is overruled and the exhibit is received in evidence.

MR. MARGIOTTI: I did not hear Your Honor.

JUDGE MURPHY: The objection is overruled and the affidavit is received in evidence.

(Document heretofore marked for identification Respondent's Exhibit No. 6, was received in evidence.)

MR. MARGIOTTI: At this time, Your Honor, we ask leave to propound written interrogatories to the affiant?

JUDGE MURPHY: That motion is taken under advisement. (830) The gentleman is in court as you have already stated on the record, and it is not your side of the case. We will take the motion under advisement. The Respondent is now putting its case in.

MR. MARGIOTTI: Your Honor, I cannot very well have interrogatories prepared when I did not even know the motion is going to be made.

JUDGE MURPHY: If you want to challenge his affidavit you can call him.

MR. MARGIOTTI: As a witness?

Edward F. Wunsch--Direct

JUDGE MURPHY: Yes, sir, when it comes to your side of the case. We are on the Respondent's side now.

MR. VAN ARTSDALEN: Mr. Edward Wunsch.

JUDGE MURPHY: I might say to defense counsel or the Relator's counsel that we have taken, as we stated, your request for interrogatories and we are reserving ruling on that for the moment.

MR. MARGIOTTI: Judge, I do not have it ready.

JUDGE MURPHY: Of course you do not. We reserve ruling on it, and if we rule against you you will not have much of a problem for the present, but if we rule in favor of you you have work to do. All right.

(831-2) EDWARD F. WUNSCH, called as a witness in behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Wunsch, where do you live?

A. Lower Southampton Township.

Q. Can you give us an address?

A. Feasterville.

Q. How old are you?

A. 31.

Q. What is your present occupation?

A. Chief of Police, Lower Southampton Township.

Q. What was your occupation on December 1, 1947?

A. Assistant foreman of the Budd Company, working for Edmund G. Budd Company.

Q. What was your occupation on June 15, 1948?

A. I was employed in the same—by the same company.

Q. Did you have the same employment in between December 1, 1947 and June 15, 1948?

A. Yes, sir.

Q. Now, in order to further identify yourself, sir, are you the Edward Wunsch that testified in the Foster-Zietz case and in the Darcy case?

(S33) A. Yes, sir.

JUDGE MURPHY: Excuse me just a minute. The ruling of the Court is that the Relator's counsel will be afforded a reasonable time to give some idea of the length of time they require to submit, in connection with the affidavit just received, interrogatories to Judge Biester.

BY MR. VAN ARTSDALEN:

Q. And to further identify —

JUDGE MURPHY: I am sorry to interrupt you. I wanted to get that ruling made. As we understand it, Relator's counsel will give the matter some thought, and before the afternoon is over if possible advise the Court how much time they will require to get their interrogatories ready, and if the request is thought reasonable, and we expect it will be, we will grant that time.

Now, will you read the question asked the witness?

(Question read.)

BY MR. VAN ARTSDALEN:

Q. Now, Mr. Wunsch, to further identify yourself were you one of the persons that was in the Feasterville Tavern on the night of the shooting?

A. Yes, sir.

Q. Now, Mr. Wunsch, do you remember the date of the shooting?

A. It was December 22.

(834) Q. Now, between December 22, 1947 up until the date of the trial, where were you living?

A. In Feasterville on Buck Road.

Q. Were you at that time married or single, sir?

A. I was married.

Q. During that period of time—were you in Feasterville between December 1, 1947 and the time of the Darcy trial?

A. Yes, sir.

Q. May I ask you whether during part of that time you were in the hospital?

A. Yes, sir; I was.

Q. During what period of time, sir?

A. The dates I gave, as closely as I can remember—I mean, there may be—I went into the hospital December 22, the night of December 22, and I was allowed to come home for the Christmas Holidays, and then I returned to the hospital for further hospital treatment and operations.

Q. For how long a period of time?

A. I believe the hospital period was a term of three weeks.

Q. All right, sir. Now, then, between the time of the shooting up until the time of the Darcy trial did you see or observe any mass meetings concerning this case in Feasterville?

A. No, I didn't.

Q. Did you observe any groups of persons talking about this (835) case?

Edward F. Wunsch--Direct

A. No, sir.

Q. What if anything can you tell us of the effect that this incident had at Feasterville?

MR. MARGIOTTI: That is objected to as called for a conclusion.

JUDGE MURPHY: That is exactly the objection you made before and we sustained it. We are consistent. Objection sustained.

BY MR. VAN ARTSDALEN:

Q. Mr. Wunsch, were there any public meetings called as a result of this case that you know of?

A. No, sir. There were no meetings called.

Q. Were there any disturbances created after June 22 relative to this case, if you know?

JUDGE MURPHY: Just a minute, please. Read the question, Mr. Reporter. We are seven months off.

MR. VAN ARTSDALEN: I withdraw the question.

Q. Were there any disturbances relative to this case after December 22, 1947?

A. No, sir.

Q. Now, Mr. Wunsch, did you testify at the Darcy trial?

A. Yes, I did.

Q. Were you present in court on any days during the Darcy trial?

(836) A. Yes, I was.

Q. Will you tell us, please, what days, if you recall?

A. To be perfectly honest I can't recall the entire number of

Edward F. Wunsch—Direct

days that I was present, but I know, I am pretty certain it was June 8 of 1948. I may be wrong but I think that is right.

Q. I believe that the record indicates, Mr. Wunsch, that you testified on Thursday, June 10, 1948.

MR. MARGIOTTI: Objected to as leading.

JUDGE MURPHY: We will take it. We will permit these leading questions as far as the date at which he testified, seven years after.

MR. MARGIOTTI: It is not so serious.

JUDGE MURPHY: Read the question or the statement of counsel.

(Question read.)

BY MR. VAN ARTSDALEN:

Q. Does that refresh your recollection in any way?

A. Yes, sir. I would say I did.

Q. How many sessions of the Darcy trial did you attend?

A. To the best of my knowledge, three.

Q. Were they all morning sessions or morning and afternoon? What sessions were they to the best of your recollection?

A. Why, I attended—they were day sessions mainly. I may have—there was one session at night that I did attend, but I (837) don't recall just what the situation was at that time.

Q. Of the sessions of the Darcy trial that you attended, what, if anything can you tell us about the number of persons that were in the courtroom?

A. I wouldn't say that the courtroom was crowded. I mean, there weren't a great number of people there, if that is what you mean.

Q. Where did you go or remain while you were in the courtroom?

A. I sat behind the jury on the top row, and also was out in the vestibule, the vestibule of the right outside of the courtroom.

Q. During any of the sessions and times that you were in the main courtroom during the Darcy trial did you observe any disturbances in the courtroom?

A. I did not.

Q. Did you observe any loud or boisterous talking in the courtroom?

A. No, sir.

Q. Was the courtroom at any time cleared by order of the Court or order of any court officials?

A. Not to my knowledge.

Q. What about the corridors outside of the main courtroom; what can you tell us as to the number of persons that were in the (S38) corridors and halls?

A. When?

Q. In the sessions that you attended. Excuse me.

A. To me it would be routine. There was nothing out of the ordinary.

Q. Now, did you observe anything unusual on the streets of Doylestown during the times that you were in Doylestown during the week of the Darcy trial?

A. No, sir.

Q. Did you observe any disturbances in Doylestown?

A. I did not.

Q. Now, will you tell us briefly what conditions existed at the Foster-Zietz trial that you have personal knowledge of?

A. My personal thought would be that it was just routine. There was nothing out of the ordinary in either case.

Q. Now, during the course of the trial of both Foster and Zietz and of Darcy, where were you living at that time?

A. In Feasterville on Buck Road.

Q. Were there any disturbances in Feasterville during either of those trials?

A. No, sir. Not to my knowledge.

Q. Now, Mr. Wunsch, I think you testified you are now Chief of Police of Lower Southampton Township?

A. Yes, sir.

(839) Q. How long have you been Chief of Police, sir?

A. Going on the third year.

M^R. VAN ARTSDALEN: Cross-examine.

M^R. MARGIOTTI: No cross-examination.

M^R. VAN ARTSDALEN: All right, sir. Thank you very much, Mr. Wunsch.

(Witness excused.)

M^R. VAN ARTSDALEN: Mr. Handy.

EARL D. HANDY, called as a witness in behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

BY M^R. VAN ARTSDALEN:

Q. Mr. Handy, what is your occupation?

A. Warden of Bucks County Prison.

Q. Where do you live at the present time?

Earl D. Handy--Direct

A. In the Warden's House in the Bucks County Prison.

Q. How long have you been Warden of Bucks County Prison?

A. Since 1940.

Q. Were you Warden between December 22, 1947 and June 15, 1948?

A. I was.

Q. Do you recall on what date--strike that question, please.

(840) Was David Darcy at any time during that period of time in your custody?

A. He was.

Q. On what date was he placed in your custody?

A. I do not know the exact date on that.

Q. Were you present in Doylestown from December 22, 1947 through June 15, 1948?

A. I was.

Q. Did you see or observe any unusual incidents in relation to this case?

A. I did not.

Q. Mr. Handy, you were Warden during the Darcy trial?

A. I was.

Q. Will you tell us, please, by what means Mr. Darcy was taken back and forth between the court house and the Bucks County Prison?

A. We received word over the phone when he was to be taken to the court. At that time two of the state police came to the prison, and we had him ready to transport him to the court house. I personally went with him or followed him in my car.

Q. Mr. Handy, on any of the occasions that the Relator, David Darcy was taken from the prison to the court house or from the court house back to the prison were there any disturbances of any sort that you saw or observed?

(841) A. There was not.

Earl D. Handy—Direct

Q. Were there any mass demonstrations or any demonstrations of any sort exhibited against David Darcy?

A. There was not.

Q. Were there any crowds at any time around the entrance to the Bucks County Prison?

A. There was not.

Q. Did you observe any persons around the entrances to the Bucks County Prison on any occasion that you took Darcy out or brought him into the Prison?

A. There might have been a photographer there at one time, but at no time did he ever get into the Prison. Now, whether he got a picture or not I could not say.

Q. How far is the Bucks County Prison from the court house, please?

A. Approximately three and a half squares.

Q. Is that a straight street that one goes on?

A. It is directly—Pine Street runs in front of the Prison and runs directly to the driveway that runs into the court yard.

Q. Were there ever crowds in the place where Mr. Darcy was brought into the court house?

A. There was not.

Q. And how was he brought into the court house, please?

A. He was brought into the court house usually by two state (S42) police, handcuffed. He was taken into the rear door and the handcuffs were taken off of him. He was put into the courtroom then as soon as they were ready to take him in.

Q. And at any time was he taken through any crowds or persons whatsoever?

A. He was not.

Q. At any time during the course of the trial or at any other occasions when the Relator was outside of the Bucks County Prison, did you hear or observe any threats or threatening gestures made toward the Relator?

A. I never heard of any.

Q. Did you ever observe it?

A. I did not.

Q. Were there any such incidents ever reported to you?

A. There was not.

Q. Was the Relator ever taken through the main aisle of the courthouse?

A. I would say absolutely no.

Q. And what about the front hall and front corridor of the courthouse?

A. He was not.

Q. Were you in court during all the sessions of the trial of David Darcy?

A. I was there, I believe, every session from the beginning (843) to the end.

Q. Did you see and observe any disturbances of any sort in the courtroom at any time?

A. There wasn't any.

Q. Was the court cleared at any time?

A. It was not.

Q. Where did you sit, Mr. Handy?

A. I usually sat right where the Sheriff sits, that is, coming from the main corridor towards the court benches. I sat on the third or fourth seat to the right-hand side.

Q. Now, will you kindly refer to Relator's Exhibit No. 135, and indicate on that, please, just where it was that you sat?

A. I usually sat approximately here. (Indicating.)

Q. You are indicating the second chair—the fifth chair from the right of the main corridor on the row of chairs immediately in front of the railing that separate the main floor of the courtroom from the spectators' benches?

A. That is correct.

Q. What if anything did you observe about the benches immediately to your rear?

A. Right in back of the row where I was seated, where we

usually have the prisoners seated, we had that bench blocked off.

Q. Just a moment. I want to clear up one thing that may be ambiguous in your statement. Were you sitting alongside of the (844) prisoners or of the prisoner?

A. Sometimes I might have been sometimes one or two seats away from him.

Q. All right. Will you go ahead and tell us about the benches to the rear?

A. We blocked the bench off in back of what we call the prisoners row. We had a chair in each end because we did not want anybody seated there.

Q. At any time during the course of this trial did you hear any spectators in the—or other persons in the courtroom making any threatening statements to or about the Relator?

A. I never heard anybody.

Q. Did you see or observe any magazines or newspapers in the courtroom at any time?

A. I did not.

Q. Were you in a position to see and observe?

A. I was.

Q. Do you have any recollection of where Mr. Bierster, the District Attorney, or Willard S. Curtin sat during the charge of the Court?

A. Most of the time I would say he sat directly in front of the jury.

Q. I am speaking of the charge now, sir. Do you have any independent recollection of where they were seated at that time?

(845) A. I am sorry. I would not say, I do not just recall whether he was sitting there or someplace else.

Q. What can you tell us about the appearances of Judge Boyer in the courtroom?

A. I believe on most of the mornings when court was called.

in session he did appear in court on--until the miscellaneous matters were handled, and to the best of my knowledge he then departed for some other cases that he was hearing, that is, for the first few days.

Q. Mr. Handy, referring to Relator's Exhibit No. 135, can you tell us of any changes in the courtroom between the time that this--strike that question out, please.

Referring to Relator's Exhibit No. 135, does that accurately depict the conditions presently existing in the Bucks County Court House courtroom No. 1?

A. That is the present condition now, yes.

Q. What changes if any do you know of that existed at the time of the Darcy trial?

A. To the best of my knowledge there was only two chairs for the judges to sit on.

Q. All right.

A. And then to my own personal knowledge the witness stand was changed where the entrance was made from a different position. Now, I think that is the only difference I see.

(846) Q. There are indicated in that drawing certain tables. Were there any changes in the location of the tables to your knowledge?

A. In the last twenty years that is the way I can recall them.

Q. I want to refer you, Mr. Handy, to Relator's Exhibits 118, 119, 120, and 121, and ask you whether they accurately depict the conditions presently existing in the Bucks County Court House Court Room No. 1? (Handing.)

A. Yes. It does.

Q. Now, then referring to those exhibits are there any changes that existed at the time of the Darcy trial?

A. Yes. I think the entrance to the witness stand here was isn't the same as it is here.

Q. What about tables that are shown in those photographs,

A. The tables look in identically the same position as they were before. I do not see any difference.

Q. Were there any more tables than are depicted in these photographs?

A. You mean over and above of what is here shown in the pictures?

Q. Yes, sir.

A. I never seen anything else.

Q. Were there any fewer tables than shown in these pictures?

A. There were three tables there to my own knowledge.

(847) Q. Do you have any independent recollection of any evening session of court?

A. Are you speaking of the Darcy trial?

Q. The Darcy trial, yes, sir.

A. I believe there was one evening session.

Q. Do you recall whether or not Judge Boyer was in the courtroom during any portions of that session?

A. I wouldn't swear that he was or wasn't. I really do not know.

MR. VAN ARTSDALEN: Cross-examine.

MR. MARGIOTTI: No cross-examination.

(Witness excused.)

MR. VAN ARTSDALEN: Will the Court bear with us just a moment?

(A short interruption.)

MR. VAN ARTSDALEN: The Commonwealth rests, Your Honor.

JUDGE MURPHY: We will take a ten-minute recess.

(Recess taken.)

Raymond C. Reed—Direct

(David Darcy present in courtroom.)

MR. MARGIOTTI: Mr. Reed.

RAYMOND C. REED, called as a witness in behalf of the Relator, being first duly sworn, was examined and testified as follows:

(848) MR. VAN ARTSDALEN: If the Court please, may we request an offer of proof?

JUDGE MURPHY: After the witness is once identified, yes.

DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Reed, where do you live?

A. Penn's Park, Pennsylvania.

Q. How long have you lived there?

A. About fifteen years.

Q. What is your business?

A. I am in the insurance business.

Q. Do you have any other businesses?

A. Well, yes, I guess.

Q. Well, what?

A. I hold the office of Notary Public and Justice of the Peace.

Q. And Justice of the Peace, what town is that in?

A. Bucks County.

JUDGE MURPHY: Now, will you make the offer, please. We are requiring it for the purpose of the record. We are re-

quiring this offer because, as we understand it, the Pennsylvania Supreme Court and the Circuit Court and the United States Supreme Court and this court has said that you shall not go back of the jurors. As we understand it, there has been a suggestion or (849-50) intimation that this gentleman has been in contact with a juror. Now, then, make the offer.

MR. MARGIOTTI: Now, Your Honor, this is the husband of a juror. He is not a juror.

JUDGE MURPHY: No, no. This is an attempt, as I understand it—as the Court understands it, and that is why we are asking for the offer or allowing the request for an offer—the question is asked: Did not this man on the stand have a conversation with the juror after she was selected as a juror and when she was supposed to be protected by the state? What is the offer?

MR. MARGIOTTI: All right. We now propose to prove by the witness on the stand that his wife, Anna Reed, was a juror in the Darcy case, that during the trial Mrs. Reed called him on the telephone, and that they had a telephone conversation which lasted three or four minutes, after which—and defendant was asked to bring to Mrs. Reed certain items, after which the witness proceeded to go to Doylestown with a child or two and some personal belongings of Mrs. Reed, and he saw Mrs. Reed and conversed with her at a time when they were about six feet apart.

JUDGE MURPHY: All right.

MR. MARGIOTTI: This is for the purpose of contradicting the Respondent's testimony.

JUDGE MURPHY: What is the position of the common-wealth?

(851) MR. VAN ARTSDALEN: We object to the offer, Your Honor.

JUDGE MURPHY: It would appear to the Court this is a backhanded way to get into the door, precluded by the Court, but to avoid error we will permit it and let the Appellate Court pass on this as a matter of law, but it looks like a backhanded entrance to the door that is closed, but we will take it.

MR. MARGIOTTI: I do not know how you can prove this except by some other person.

JUDGE MURPHY: The Court has ruled.

MR. MARGIOTTI: There is nothing backhanded as far as I am concerned, I assure you.

Q. Mr. Reed, was your wife on the Darey jury?

A. She was.

Q. And while she was on the jury did you hear from her?

A. Yes.

Q. How?

A. First by telephone.

Q. She called you on the telephone - pardon me. Who called you on the telephone?

A. I think Mrs. Van Sant called me on the telephone.

Q. Yes, and who was put on the phone?

A. My wife.

Q. How long did you talk to your wife?

(852) A. I would assume I don't know. I would assume I don't know, I didn't time it. I assume two or three minutes. I don't know, maybe four. I don't know exactly.

Q. Well, as a result of that conversation—strike that out. Did you recognize your wife's voice?

A. Yes.

Q. Had you talked to her on the telephone before?

A. You mean —

Q. Your wife.

A. You mean before the trial?

Q. Yes, before that.

A. Yes.

Q. As a result of that telephone conversation what if anything did you do?

A. I got some of Mrs. Reed's personal things in a suitcase and took them to the Doylestown Inn.

Q. When you took them to the Doylestown Inn did you see Mrs. Reed?

A. Merely by accident I saw her, yes.

Q. How close did you come to her?

A. Oh, I would assume six to eight feet. I wouldn't—that is just a rough estimation.

Q. Did you talk to her?

A. Well, merely said hello I guess. We had no immediate (853) conversation. Mrs. Van Sant was present.

Q. You had no extended conversation?

A. No.

MIR. VAN ARTSDALEN: No. That is not the testimony, if the Court please.

Q. You had no conversation at all?

JUDGE MURPHY: The objection is sustained.

Q. Did you have any at all?

A. I think Mrs. Reed asked me a question about the child.

Raymond C. Reed—Direct

Q. What did she say to you?

A. She asked me how she was and one thing is, who combed her hair.

Q. Who combed the child's hair?

A. Yes.

Q. Did you reply?

A. Yes, I did.

Q. What did you say?

A. I said I did of course.

Q. Was there anything else said that you recall?

A. No.

Q. Now, in this telephone conversation that you had with Mrs. Reed, do you know whether there was any other person on the telephone at the time?

A. I don't know. I assume Mrs. Van Sant was right there.

(854) Q. Right where?

A. By the phone.

Q. Do you know whether she was?

A. Well, she was on the phone prior to Mrs. Reed. So I assumed she was right there.

Q. But do you know she was there?

A. No.

MR. MARGIOTTI: All right. Cross-examine. Well, just a minute.

BY MR. MARGIOTTI:

Q. Oh, did you deliver the personal effects?

A. Yes, I did.

Q. Who did you deliver them to?

A. I set them down as soon as I saw that Mrs. Reed and Mrs. Van Sant were right next to the hotel door. I did not go any nearer. I set them down.

Q. Did you see any person picking them up?

A. No.

MR. MARGIOTTI: They may cross-examine. I am through.

CROSS-EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Reed, are you here subject to a subpoena?

A. Yes, I am.

(S55) Q. Do you know how it came about that the counsel for the Relator found out about this?

A. Not exactly I don't.

Q. What knowledge do you have regarding that?

A. Well, sometime after the Darcy trial a couple members of his family came to my home to talk to Mrs. Reed.

Q. A couple members of whose family?

A. Darcy's family.

Q. All right. Go ahead, sir.

A. They called on my home.

Q. Were you present at that time?

A. Yes. I was.

Q. Was it then that this came about?

A. Yes.

MR. MARGIOTTI: What came about, this?

JUDGE MURPHY: Do you object?

MR. MARGIOTTI: I object to that, Your Honor.

JUDGE MURPHY: Overruled. You will have a chance to develop it.

MR. MARGIOTTI: What he means by "this."

JUDGE MURPHY: I hope counsel will clear that up.

Q. Was it at that time that this information that you have just testified to on the stand was given to members of the Dancy family?

(S56) A. Yes.

Q. Do you know about when that was, Mr. Reed?

A. I think it was March 25 of 1951.

JUDGE MURPHY: May I ask counsel, is the Reed affidavit that the Court was ordered to strike from the rolls, was it part of the papers submitted by counsel for the Relator?

MR. RYDER: Yes, sir.

MR. MARGIOTTI: What is this?

JUDGE MURPHY: Was the Reed affidavit part of the affidavit that you submitted before but we were ordered to strike from the rolls? That is my question. The Circuit Court in its mandate ordered us to strike it from the rolls.

MR. MARGIOTTI: It was not an affidavit. It was a statement.

JUDGE MURPHY: It was Mr. Reed's statement that we were ordered to strike from the rolls.

MR. MARGIOTTI: It does not concern this thing.

JUDGE MURPHY: I do not know.

BY MR. VAN ARTSDALEN:

Q. At that time was any letter given to the members of the Darcy family?

A. Yes. There was.

JUDGE MURPHY: There is nothing in the statement of Anna L. Reed regarding whether or not she talked to her husband (S57) on the phone or who delivered her clothes.

MR. MARGIOTTE: That is right, and we do not contend there was.

JUDGE MURPHY: All right.

BY MR. VAN ARTSDALEN:

Q. You say first you received a call you believe from Mrs. Van Sant?

A. That is right.

Q. Did you know Mrs. Van Sant's voice at that time?

A. Well, I never talked to Mrs. Van Sant on the phone, but I had seen her, and wasn't sure it was her voice, but I would assume it was her voice. I thought it was her voice.

Q. The voice identified itself as being Mrs. Van Sant?

A. Yes.

Q. When was it that you got that call, Mr. Reed?

A. I would say that it was the second day that Mrs. Reed was on the jury.

Q. And about what time was it?

A. I think it was around lunchtime. I am not sure of the time. I don't remember exactly.

Q. When was it that you brought the clothing to your wife?

A. That evening.

Q. What did you bring to her, please?

A. Well, her personal clothing, and stockings, and so forth.

(858) Q. Any reading matter brought?

A. No.

Q. When was it—what time was it when you brought it into the Doylestown Inn?

A. I would assume it was right after dinner. I don't know the exact time. I would say 7 or 7:30.

Q. But I believe that you stated it was merely by accident that you saw your wife. Would you elaborate on that a little bit, if you will?

A. As I recall the jury was in the lobby of the Doylestown Inn. I assumed they were going out or had just gone in, and when I arrived at the porch Mrs. Reed recognized me, I think, because she and Mrs. Van Sant came towards the door.

Q. Was Mrs. Van Sant in your immediate presence with Mrs. Reed at all times?

A. She was alongside of Mrs. Reed all the time.

Q. Any conversation that took place between you was heard by Mrs. Van Sant, is that correct?

A. That is correct.

Q. Was there any conversation at any time between you and your wife—strike it out.

Was there any conversation at that time between you and your wife relative to the Darcy case?

A. There was not.

(859) Q. Was there any conversation beyond that which you have already related to us?

A. No.

Q. Did you leave the clothing?

A. Yes.

Q. Do you know whether you handed it to Mrs. Van Sant or to your wife?

A. I think I set it down on the porch.

Q. How far away were you from your wife?

A. Well, I would assume the porch of the Doylestown Inn

isn't too long, and I would assume six or eight feet. I don't know, maybe ten.

Q. It may have been ten feet you say?

A. It may have been.

Q. Could it have been as much as twelve feet?

A. That is right.

Q. Did this take place out on the porch of the Doylestown Inn?

A. Well, I was on the porch of the Doylestown Inn, but Mrs. Reed and Mrs. Van Sant were inside the door.

Q. In the lobby?

A. Yes.

Q. Did your wife come out of the Inn at that time?

A. No.

Q. Did you go into the Inn at that time?

A. No.

Q. Do you know what the two members of the Darcy family told you that contacted you?

A. I think Joseph.

Q. Well, let me ask you this: Do you see them here in court today?

A. Yes.

Q. Will you point them out?

A. Joseph, and Jean is not here; she was here this morning.

Q. All right. Who was it that subpoenaed you, sir?

A. Joseph.

Q. What did Joseph Darcy say to you last night when you were subpoenaed?

A. He asked me if I would come here and testify, and I told him that I didn't want to.

Q. All right. Did he say anything to you about your wife being under subpoena?

A. Yes. He delivered a subpoena to her too.

Q. He did deliver a subpoena to your wife?

Raymond C. Reed--Re-direct

A. Yes, sir.

Q. During the telephone conversation--when the telephone conversation took place, first with Mrs. Van Sant and then your wife, what did she say or what was the conversation?

A. Well, it was merely she told me what she ordered me to (862) bring and where it was in the house.

Q. Was there any conversation relative to the Darcy case at all?

A. There was not.

Q. Was there at any time from the time that she was sworn as a juror until after she was dismissed?

A. No. There was not.

Q. And since you were subpoenaed by Joseph Darcy has he discussed this matter with you?

A. Well, yes, I would say he has.

Q. Did he today outside?

A. Yes.

Q. Did he at lunchtime?

A. No, not at lunchtime.

MR. VAN ARTSDALEN: That is all, sir.

RE-DIRECT EXAMINATION.

BY MR. MARGIOTTI:

Q. Mr. Reed, you say your wife was subpoenaed?

A. Yes. She was.

Q. And last evening were you told that she did not have to come--not to come?

A. Yes.

Q. Who called you and gave you that information?

A. Joseph Darcy.

(863) Q. Joe Darcy?

A. Yes.

Q. Joe Darcy, and then she has not come here to court?

A. No.

Q. This morning when you came in, did you meet with me?

A. Yes.

Q. Did you tell me substantially the same that you told on the witness stand?

A. I hope so.

Q. That is right. That was over in the Hotel Casey in the lobby?

A. Yes.

MR. MARGIOTTI: I think that is all, Mr. Reed.

RE-CROSS EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Mr. Reed, just one other question. Do you mean that after Joseph Darcy subpoenaed your wife, subsequently or later last night there was a telephone conversation that she did not have to obey that subpoena?

A. Yes, there was.

MR. VAN ARTSDALEN: All right. That is all, sir.

(Witness excused.)

JUDGE MURPHY: Call your next witness.

MR. MARGIOTTI: What is that, Your Honor?

(864) JUDGE MURPHY: Any other witness?

MR. MARGIOTTI: Your Honor, I would like to have some time to prepare these interrogatories. I would like to do it this afternoon or this evening.

JUDGE MURPHY: If there are any other witnesses to be called the Court is open for business.

MR. MARGIOTTI: I have no other witnesses in court except that I may want to cross-examine some more Mr. Curtin.

JUDGE MURPHY: This is the opportunity to do it.

MR. MARGIOTTI: I do not have the record with which to do it because I do not want to ask a question unless I have the record before me.

JUDGE MURPHY: What record is it?

MR. MARGIOTTI: It is a record of the Pardon Board of Pennsylvania in which his language was taken down verbatim about which I asked him this morning, but I cannot ask him particularly about that and about that without having the record, because I want to contradict him.

JUDGE MURPHY: Do you say, sir, as an officer of the court, that it was the practice at the time that you appeared before the Board of Pardons in 1951 in the Darcy case to have a stenographic transcript of everything that was said in that record?

MR. MARGIOTTI: I do not know whether the practice (865-866) prevailed at that particular time.

JUDGE MURPHY: Can you find that out?

MR. MARGIOTTI: I put that practice in order when I was Attorney General.

JUDGE MURPHY: Were you the Attorney General at the time you appeared before the Pardon Board in 1951 in the Darcy case?

MR. MARGIOTTI: I was not there as Attorney General. At that time I was there as an attorney, and I cannot answer that, Your Honor, but I can say this to you. I talked to Harrisburg this morning, and I have learned that they followed the practice after I left, and that they had the notes of testimony transcribed after each hearing and made a part of the record in each case.

JUDGE MURPHY: Are the notes on the way to Scranton?

MR. MARGIOTTI: That I do not know, but they will be on their way to Scranton if they are not.

JUDGE MURPHY: Have you any other testimony except that?

MR. MARGIOTTI: That, and perhaps calling Judge Biester. Your Honor has indicated that I may call Judge Biester as my witness.

JUDGE MURPHY: I say, sir, you will make the choice.

MR. MARGIOTTI: Yes. If I am to call him as my witness, I would like to call him as my witness but as if under cross-examination, however. I do not think that a person can (867) file an affidavit such as was filed in this case. Then must I call him as my witness, the adverse party call him as a witness, and be bound by his testimony?

JUDGE MURPHY: Are you making any motion?

MR. MARGIOTTI: At this time I move that I be permitted to call Judge Biester for cross-examination under the affidavit which he filed.

JUDGE MURPHY: Have you any authority?

MR. MARGIOTTI: This is all new to me. It comes up to me as a new impression. If I had any authority I would give it to you but I have not.

JUDGE WATSON: He is in no sense a party in any way?

MR. MARGIOTTI: No.

JUDGE WATSON: He is not a party to this action?

MR. MARGIOTTI: No.

JUDGE WATSON: Under what theory do you call him as for cross-examination?

MR. MARGIOTTI: Because he should have been called as a witness by the party that called him, and in place of calling —

JUDGE WATSON: Should have been called by the person what?

MR. MARGIOTTI: Should have been called as a witness by the party that produced the affidavit.

JUDGE WATSON: Under the Act he has this privilege.

Discussion

(868) MR. MARGIOTTI: I agree with you, but since he substituted an affidavit for the witness I believe I should be given the right to cross-examine the witness. I may be wrong.

JUDGE MURPHY: We understand then that counsel has now requested the Court that in view of the fact that a judge of the Court of Common Pleas of Pennsylvania and at present a judge, has given an affidavit, that in this civil proceeding he should be given the authority, not to call and question the judge, but to call him as a hostile witness and for cross-examination or an adverse party, is that it?

MR. MARGIOTTI: Well, I call him for cross-examination because he produced the affidavit for the opposition.

JUDGE MURPHY: All right. We will take a look at the civil rules. Do you want to say anything? There is a civil rule which says something about calling adverse parties and the like. It would be our judgment that there is nothing that would require any—considering the witness hostile. We will take a recess for ten minutes.

MR. RYDER: That is Rule 43 b, Your Honor.

JUDGE MURPHY: Yes.

(Recess taken.)

(David Darcy present in the court room.)

JUDGE MURPHY: Mr. Reporter, will you read the request that has been made?

(Record read.)

Discussion

JUDGE MURPHY: We understand the request is that (869) Judge Biester be called as if for cross-examination —

MR. MARGIOTTI: If Your Honor please, not "as if for cross-examination"; for cross-examination.

JUDGE MURPHY: Well, the reporter read the record. All right. There is a request now that Judge Biester be called for cross-examination.

MR. MARGIOTTI: That is right.

JUDGE MURPHY: The Court has before it Rule 43(b) of the United States Rules of Civil Procedure: (Reading).

"A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief."

The Court will hold that they will not characterize Judge Biester as an unwilling nor a hostile witness, nor will we characterize him as an adverse party, or an officer, director, or managing agent of a public or private corporation, or of a partnership or association which is an adverse party.

We will say to counsel that they have the choice (870) to decide whether or not they desire to call Judge Biester. If they call Judge Biester they will call him as their witness. As to whether or not they may ask him leading questions, if the questions are asked, and there is objection to them at the time, we will rule on the propriety of each question seriatim.

MR. MARGIOTTI: Your Honor, I am not concerned much about the leading questions. I said if I am bound by the answers to the questions. I am not concerned as to whether or not I will ask leading questions. I am more concerned as to whether I am bound by his answers.

JUDGE MURPHY: I meant to say to you, sir, if he was called and he testifies, we will consider him as a witness. We will pass upon his credibility, and we will pass upon what facts he adduces. But merely by calling him, if you have him say one thing and it contradicts what the testimony was on your side, because he says it does not make it so. The ultimate thing will be the credibility of the witness as it strikes the judges; but you will not be bound by any technical rules, that merely, because you call him as your witness you will have to develop everything he says. We will pass upon the questions as they are asked.

MR. MARGIOTTI: That clears it up.

JUDGE MURPHY: Now, if he is called as a witness as to whether or not you can follow it, after having the evidence and having him in court you can follow it by interrogatories, ruling reserved.

(871) MR. MARGIOTTI: Well, if Your Honor please, it is now within five minutes of adjourning time.

JUDGE MURPHY: The Court has not said what time adjournment would be, sir.

MR. MARGIOTTI: I am assuming it is 4:30. I would like to see whether or not we can handle this matter by interrogatories. If we can it will solve the problem. If it cannot

Discussion

we will call him as a witness. I do not like to inconvenience the judge.

JUDGE MURPHY: Do I understand that the testimony insofar as the respective parties are concerned, is closed with the exception of a decision as to whether or not you are going to submit interrogatories to Judge Biester instead of calling him as a witness, and No. 2, until you are afforded an opportunity to have the record of the Board of Pardons at a hearing sometime or other, which has not been fixed at all so far as this record is concerned—as to sometime when Mr. Curtin appeared there on one occasion or other is not in the record, and then being afforded the opportunity of cross-examination? We ask when did Mr. Curtin appear before the Board of Pardons?

MR. MARCHIOTTI: Well, my opinion is it was in May or June, possibly June of —

JUDGE MURPHY: 1949, 1950, 1951?

MR. MARCHIOTTI: 1950.

JUDGE MURPHY: 1950?

MR. MARCHIOTTI: 1950. When did Governor Fine take (872) office?

JUDGE MURPHY: When did you leave? He could not be there while you were there?

MR. MARCHIOTTI: I was there when Fine was in office.

JUDGE MURPHY: But he did not get there until the second year after you left, or the third.

MR. MARGIOTTI: That is before I left.

JUDGE MURPHY: He did not make the statements while you were on the Board of Pardons.

MR. MARGIOTTI: It was before I became Attorney General. It was before I was appointed by Jim Duff.

JUDGE MURPHY: The case came about after you were Attorney General. Then you became counsel.

MR. MARGIOTTI: No.

JUDGE MURPHY: I am trying to help you fix the date.

MR. VAN ARTSDALEN: Your Honor, I do not know whether this is in order —

MR. MARGIOTTI: I would say it was June, 1951.

MR. VAN ARTSDALEN: I do not know whether this is in order at this time or not, but if the purpose of getting these records is to impeach the credibility of Mr. Curtin, as I recall his testimony, and I may be incorrect: Your Honor, it was to the (873) effect that he did not recall what he said before the Board of Pardons.

JUDGE MURPHY: But Mr. Margiotti now intimates to the Court that what Mr. Curtin testified to here under oath, frankly contradicts what he said to the Board of Pardons, to the effect that Mr. Margiotti says by innuendo and suggestion that before the Board of Pardons Mr. Curtin said these cases were not called one after the other but there were intervals of several weeks between them, which would frankly contradict

Discussion

the record. So the good faith, the bias, and the prejudice of this witness is challenged or asserted, and we are entitled to it to see how much weight to give it.

MR. MARGIOTTI: Without dictating when we shall adjourn —

JUDGE MURPHY: Well, the Court will adjourn from now until 10 o'clock Monday morning.

MR. MARGIOTTI: Oh, Monday.

JUDGE MURPHY: Yes.

MR. MARGIOTTI: I thought you ~~were~~ going to go on tomorrow.

JUDGE MURPHY: No. We thought you were going to close today, and Judge Watson made other arrangements. So we will adjourn until 10 o'clock Monday morning.

Let me say this, that we realize that the people of Bucks County have been seriously inconvenienced, and the people of (874) Philadelphia have been seriously inconvenienced, and the people from Harrisburg, Pittsburgh, and points west. You are here making money. We cannot call that inconvenience. Lawyers are in business, but there are other people, and Judge Watson will be happy to re-arrange his schedule so that the hearing will go on at 10 o'clock tomorrow morning, and we hope to conclude this matter tomorrow as far as testimony is concerned. So that we will adjourn to 10 o'clock tomorrow morning, Saturday morning, instead of Monday morning. Is that clear to everybody? 10 o'clock tomorrow morning, and we hope by that time those papers are here from Harrisburg. The Court has driven it up and back all in one night. All right, 10 o'clock tomorrow morning.

(Whereupon at 4:30 o'clock p.m. an adjournment was had to Saturday, March 20, 1954, at 10 o'clock a.m.)

(875) (Court resumes on Saturday, March 20, 1954 at 10:05 A. M. with all parties, including the Relator, David Darcy, present in Court.)

BY JUDGE MURPHY: The Court would like to make a statement, gentlemen.

Yesterday during the course of the discussion as to whether or not we would admit the evidence of the witness Reed, we were confronted, of course, with the Mandate which told us to strike them out and not refer to it. We want to state on the record that we reiterate we don't want to get away from the command of the Appellate Court. So that we were troubled as to whether or not we should go into the Reed testimony at all; and we used the word "backhand." We should have said "indirect." It was not a question of criticizing you, sir. It was a question of trying to comply with the command of the Appellate Court?

A more serious problem is confronted by what occurred later in the afternoon. As we understand the law, the burden is upon the Relator to establish his right to the discharge by the preponderance of the evidence, and the Court that tried this case was a State court. We are a Federal Court here only because of the Constitution of the United States. It is not our concern particularly what the record is, good, bad or indifferent. We are supposed to call the shots as we see them.

Now then, there is a provision in the Act and the provision is to the effect—Section 2245:

"On the hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgment the certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts oc-

Discussion

occurring at the trial, shall be admissible in evidence. Copies of the (S76) certificate shall be filed with the court in which the application is pending and in the court in which the trial took place."

Now we don't think it is our duty to inquire whether Judge Keller filed a copy of the paper down in his own court. I think that would probably be so that the record in his court would show exactly what happened. But it does read "... setting forth the facts occurring at the trial ..."

There was an objection made by Mr. Margiotti at the time that this was all embracing and that it covered matters that were not properly included therein.

As to that paper, we say that we have received it in evidence, and it may well be that parts of it are not properly before this Court for admission by this Court, parts of it are, and it will be the duty of the Court in handling it to winnow out—to separate the chaff from the wheat, or the proper from the improper.

Now, more serious than that, Section 2246 says:

"On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits."

Now, the leading case in the books appears to be the case of Walker v. Johnson, and as we read that case—312 U. S. 275—now then: at Page 286 says Mr. Justice Roberts:

"... On a hearing he would have the burden of sustaining his allegations by a preponderance of evidence. It is true that they are denied in the affidavits filed with the return to the rule, but the denials only serve (S77) to make the issues which must be resolved by evidence taken in the usual way. They can have no other office. The witnesses who made them must be subjected to examination ore tenus or by deposition as are all other witnesses. Not by the pleadings and the affidavits; but

by the whole of the testimony, must it be determined whether the petitioner has carried his burden of proof and shown his right to a discharge. The Government's contention that his allegations are improbable and unbelievable cannot serve to deny him an opportunity to support them by evidence . . .

The last part not particularly appropriate, but the other—yes.

Now then, we call your attention to the case of *Moses v. Hudspeth*, 120 F. 2d 279 at 280.

The further contention is that an ex parte affidavit of the United States Attorney at Cleveland was improvidently admitted in evidence. The parties stipulated that the depositions of the United States Judge at Cleveland, an Assistant United States Attorney, a former Assistant United States Attorney, a deputy clerk, and others there should be taken. They were taken and introduced in evidence. The stipulation did not make any reference to the taking of the deposition of the United States Attorney, but it was taken along with the others and was introduced in evidence. Issues of fact in a case of this kind cannot be established by ex parte affidavits . . . and they cite *Walker v. Johnson*. They say there: ". . . But the evidence in question was not in that form.

(878) Now, the next case is *McGinley v. Hudspeth*, 120 F. 2d 523. They say in that case:

"The government introduced in evidence an affidavit of the Assistant United States Attorney for the District of Nebraska, in which certain facts were detailed relating to the proceedings had in the two criminal cases. Proof which is requisite in a proceeding in habeas corpus to secure discharge from confinement after conviction for crime cannot be supplied by an ex parte affidavit . . . citing *Walker v. Johnson*. ". . . But the error in admitting the affidavit was harmless, for the reason that the petition for the writ failed to state a cause of action . . . That is not our problem.

Now then, yesterday we did admit in the light of our best

Discussion

reasoning then the affidavits after a cursory or rather quick reading of the statute; and then the question came up as to what the procedure should be. We don't think that it is the right or duty of the Court to dictate to either side as to whom they shall call as witnesses. The Commonwealth can call whom they please; the Relator can call whom he pleases.

If the Court were to receive the affidavits as evidence, then the Court would have this situation: There are cases in the books that say you don't have to be confronted with witnesses, but, nevertheless, in the last there is a situation where you would have an affidavit coming in and averments made upon which the trier of the facts is going to rely in some respects or other if the situation warrants it without that person being subjected to cross-examination.

Now then, yesterday we had the problem in reading from the Civil Rules as to whether the other would want to—the (879) witness was hostile or otherwise. Certainly, the witness would be adverse to the interest of the Relator if he states facts which Relator challenges by other testimony.

Now then, unless there is some reason in the law the Commonwealth can show us, we are prepared to strike the affidavit of Judge Biester from the record and let counsel for the respective sides make what, if any approach, they desire to make on that phase of the case.

BY MR. RYDER: The affidavit of Judge Biester was offered yesterday pursuant to Section 2246 of the Revised Judicial Code, 28 United States Code, Section 2246, which was enacted following the decision, namely, *Walker v. Johnson*, which you have read, and it was enacted for the express purpose for which it was utilized in this case.

BY JUDGE MURPHY: Under Section 2245 they say there is no doubt about it. Justice Robert's decision was in 1941,

and the Act was in 1948. But under Section 2246 there is this Reviser's Note:

"This section is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Sumners of the House Committee on the Judiciary. It clarifies existing practice without substantial change.

BY MR. RYDER: I was coming to that portion of my argument.

BY JUDGE MURPHY: All right.

BY MR. RYDER: At the time—to give you a little background, if I may—(880)—this situation was presented to the Supreme Court of the United States and reargument of the Attorney General of Pennsylvania in *Smith v. Baldi* was argued in the same term of the Supreme Court as *Brown v. Allen*, 344 U. S.—immediately following *Brown v. Allen*, and I think I have always felt in my own mind since the rendition of the Opinion in *Brown v. Allen*, Footnote 19—*Brown v. Allen*, 344 U. S. 464—I have the Court's copy—this footnote reads as follows, among other things:

"... Other sections strengthen the ability of the court hearing the application fully to advise itself concerning prior hearings of the same issues for the applicant. 28 U. S. C. Section 2245 allows a certificate as to certain facts; Section 2246 provides for depositions and affidavits. Section 2247 makes liberal provision for the use of records of former proceedings in evidence. See also Sections 2248-2254, inclusive. Of course, the other usual methods of completing the record in civil cases, such as subpoena duces tecum and discovery, are generally available to the applicant and respondent.

Now the offer of the affidavit of Judge Biester was predicated entirely on Section 2246 and Footnote 19 of the Opinion

of the United States Supreme Court in the case of Brown v. Allen.

BY JUDGE MURPHY: Obiter dictum.

BY MR. RYDER: We felt it was dictum in the way of direction to the Trial Court.

BY JUDGE MURPHY: Notwithstanding the decision in United States v. Baldi —

BY MR. RYDER: (881) The Opinion that has been read is Brown v. Allen.

BY JUDGE MURPHY: Notwithstanding the footnote, in view of the previous decisions and in view of the footnote, the Reviser's Note that goes with Section 2246, and in view of the fact that we are here trying to find out exactly what happened there and that the receipt of the affidavit confronts the Court with the situation of it being offered to determine an issue of fact and then we have the situation where there doesn't appear to be any rule as to what the right of the other side is, under the circumstances we think justice will be done by saying that the affidavit as such will be rejected, that we will not receive the affidavit as proof of the facts contained therein. That has no prejudice whatsoever to the rest of the affidavit—to the rest of the record. As to any averment of fact contained in the affidavit, if any support is to be given to those averments it will have to be through testimony, of course.

BY MR. RYDER: Is it necessary to note an exception?

BY JUDGE MURPHY: To which you ask an exception—yes sir.

Hon. Edward G. Biester—Direct

Now then, certainly for the purpose of the record, this paper will remain to show what we have rejected. That is "Respondent's Exhibit No. 6," the Biester affidavit.

BY MR. VAN ARTSDALEN: In view of the Court's ruling, we ask leave to take off our rest and to reopen our case. I might say I have consulted with Judge Biester and he has expressed a willingness to testify.

BY JUDGE MURPHY: All right. You have no objection, do you, to striking off the rest?

(882) BY MR. MARGIOTTI: I think it can be stricken at the discretion of the Court.

HONORABLE EDWARD G. BIESTER, called and sworn on behalf of the Respondent, on direct- and cross-examination, testified as follows:

DIRECT EXAMINATION.

BY MR. VAN ARTSDALEN:

Q. Where do you reside, sir?

A. Doylestown Borough, Bucks County.

Q. How old are you?

A. Fifty-one.

Q. What is your present occupation?

A. Judge of the Common Pleas and associated courts of Bucks County, Seventh Judicial District of Pennsylvania.

Q. How long have you been Judge of that district?

Hon. Edward G. Biester—Direct

A. Since August 1, 1949. I believe the date is August 16, but I haven't refreshed my recollection of it.

Q. Were you originally appointed or elected to that office?

A. I was appointed to that office.

Q. By whom?

A. By the then Governor.

Q. Were you elected subsequently to the office of Judge?

A. I was.

Q. On what date, sir, or what year?

A. 1952—1951, I believe.

Q. Will you state whether or not prior to your appointment as Judge you were recommended for that appointment by the Bucks County Bar Association?

BY MR. MARGIOTTI: We object, being immaterial.

BY JUDGE MURPHY: We will take it.

BY MR. MARGIOTTI: I will withdraw the objection.

(883) BY THE WITNESS:

A. I was.

BY MR. VAN ARTSDALEN:

Q. Will you state whether or not that was unanimous?

A. It was.

Q. Prior to being appointed Judge, what was your occupation, sir?

A. Attorney at law and District Attorney of Bucks County.

Q. When did you first become District Attorney of Bucks County?

A. 1938.

Hon. Edward G. Biester, Direct

Q. Was that an appointment or by election?

A. By election.

Q. Were you District Attorney from 1938 continuously up until the time of your appointment as Judge?

A. I was.

Q. Prior to being District Attorney did you hold any other official position with the County of Bucks?

A. Assistant District Attorney.

Q. For how many years were you Assistant District Attorney?

A. Six years.

Q. Now you were the District Attorney then at the time of the Feasterville killing?

A. I was.

Q. And were you District Attorney from then up until and through the time of the trial of David Darcy?

A. I was.

Q. Did you personally investigate the killing that occurred on December 22, 1947?

A. I personally investigated in association with the County Detectives office and the Assistant District Attorney. It wasn't a personal investigation completely.

(884) Q. Did you try both the Foster-Zietz case and the Darcy case?

A. I did, with the assistance of my assistant, Willard S. Curtin.

Q. Were you the person who scheduled the dates for the trials of those two cases?

A. I was.

Q. Now, will you tell us, please, as to the trial of David Darcy—first, when did that trial begin?

A. I haven't looked at the notes, but from the testimony yesterday I gather the examination began June 7.

Hon. Edward G. Biester—Direct

BY MR. MARGIOTTI: I don't object to telling him that is the date. We agreed already to that.

BY MR. VAN ARTSDALEN:

Q. Will you tell us, please, your recollection of how the jury was selected?

A. How they were called into the box.—

Q. Yes sir.

A. My best recollection is the jury once assembled in the main courtroom, the roll having been called and marked by the Clerk of Quarter Sessions on the form which is already in evidence but I don't know the number of the exhibit, the jury then retired to another place. Each juror was brought in separately and interrogated on the voir dire. I believe that after several—possibly one or two or three—jurors had been selected on the voir dire and had taken their place in the jury box, that we then had that portion of the jury, which whatever it might have been selected, then retired to another room and then called additional witnesses or additional jurors on the voir dire and as selected by both counsel—approved by both counsel they joined their fellows until twelve were selected when there was a motion that two alternates be selected, and that was done.

(885) I don't know whether that is responsive to the question, but that is as I understand it to be.

Q. Are you familiar with the location of the furniture, chairs, tables, etc., that were in the courtroom during the time of the Darcy trial?

A. I am.

Q. I want to show you "Relator's Exhibits Nos. 118, 119, 120, and 121, and ask you, please, sir, whether they accurately depict the conditions presently existing in the Bucks County Courthouse, Courtroom No. 1?

A. They do.

Q. Will you tell us or point out, please, what, if any, changes you note in those pictures from the conditions that existed at the time of the Darcy trial?

A. I don't recall any, except that I believe that the witness box was somewhat changed since that time, the method of entrance into the box being at that time from the one side different than where the entrance now is, and a small platform having been added at that time. I don't recall any other changes. I suppose as to detail—there is a picture here that wasn't here at that time.

Q. What about the tables, sir?

A. I don't recall any change whatever in the location of the tables.

Q. Might I call Your Honor's attention to the three chairs for the Judges. Is there any change there?

A. Yes. At that time there having been but two Judges, there were but two chairs.

Q. Will you tell us, please, what you know of the manner in which the defendant was brought—that is the Relator in this case—was brought into the courtroom and taken from the courtroom?

A. In each instance he was brought in, to the best of my (886) recollection, through the rear entrance. There is a parking lot immediately adjacent to the courthouse edifice itself. The Sheriff, accompanied by, I believe, two State Policemen and possibly with the Warden of the jail also present, would bring the prisoner to that parking lot; he would then be removed from the automobile and taken in the back way of the courthouse. May I add this—that, of course, that was not under my constant observation. I saw Mr. Darcy brought there but not everyday, but I did know that he entered through the door from the rear of the courtroom when he was brought into Court, as distinguished from being brought in from the front of the courthouse.

Q. What personal knowledge do you have, sir, of the arrangements that were made for taking care of the members of the jury that were selected?

A. Well, I recall that they were housed at the Doylestown Inn and that four tipstaves were appointed to have them in custody.

Q. Now during the course of the trial of David Darcy, what, if anything, can you tell us regarding the presence of Judge Boyer in and about the courtroom?

A. My best recollection is that Judge Boyer did come in every morning. I, of course, could be mistaken in my recollection. There could have been some mornings he did not come in. But my best recollection is he came in every morning—if not every morning, almost every morning—and joined Judge Keller on the bench. Occasionally there was other Court business to attend to before the Darcy case attached, and then Judge Boyer would go to another courtroom for that purpose. He, of course, had his own duties to perform other than the trial or disposition of cases, (887) and he would return to his chambers which are immediately adjacent to the courtroom itself. And may I here interject that the only chambers in the courthouse are the chambers that were then occupied by Judge Boyer and now occupied by me. Neither Judge Keller, or now Judge Satterthwaite, has chambers in the courthouse.

Occasionally—and I confess lack of memory as to the exact number of times—he remained with Judge Keller on the bench for varying periods of time during the trial of the Darcy case. That would not be every day and it would not be, to the best of my recollection, for the length or duration of that particular session. But he was with Judge Keller sometimes—without specifically trying to fix those—he was sometimes with Judge Keller on the bench. On other occasions when not being on the bench and when not otherwise occupied he took a chair within close proximity of the doorway which enters from the chambers into the courtroom —

Q. May I interrupt for just a moment. Could you point out, please, on "Relator's Exhibit No. 135" your best recollection of where that chair was located?

A. There is presently a marking on the exhibit "Judge Boyer." I would say it was that chair or one immediately in that vicinity, possibly the one adjacent to it, but one of those several chairs.

Q. And while the exhibit is presently here, could you tell us, please, approximately how far it is from the chair marked "Judge Boyer" chair to the nearest table?

BY MR. MARGIOTTI: I object to the question in that form. If the question was intended to ask the distance between the chair and the nearest table at that time, I have no objection.

(S88) BY JUDGE MURPHY: The witness has already testified that there were no changes in the courtroom except those designated. In view of that, the objection is overruled.

BY THE WITNESS:

A. I would estimate it would be possibly eight or ten feet from that chair.

BY MR. VAN ARTSDALEN:

Q. Was it the same distance at the time of the Darcy trial?

A. To the best of my recollection, it was.

Q. Do you have any recollection at this time as to whether or not Judge Boyer was in the courtroom on Friday evening the Friday evening session?

A. I do not recall his having been there.

Q. Do you recall strike that. During the charge of the Court will you tell us, please, what you recall of the charge so far as your location in the courtroom is concerned?

Hon. Edward G. Blester—Direct

A. My best recollection is that when the charge began, or very early in the charge, Mr. Curtin and I retired to the seats which are in front of the table nearest to the right of the sitting Court.

Q. Is that the table which has been identified by some persons as being a press table?

A. I heard Mr. Curtin refer to it in language that might be assumed to be a press table. That is the table I am referring

Q. Where was it again, sir?

A. There are three tables on the "Reactor's Exhibit No. 135." One of the tables has what I presume are indicated to be fourteen chairs. Facing the jury we would be—or I would be in the (889) second or third chair nearest to the bench, the Court's bench.

Q. And were you seated there with any other person?

A. Mr. Curtin was there with me. I, of course, don't recall whether we were there for every moment of the charge, but my recollection is we were there for a major part of the charge. Mr. Margiotti, I can't see Mr. Van Artsdalen.

BY MR. MARGIOTTI: I am sorry.

BY MR. VAN ARTSDALEN:

Q. Do you have any recollection of Judge Boyer being present in the courtroom during any portion of the charge?

A. I have not.

Q. Now you have been in Court here in this courtroom since what time, sir?

A. Yesterday at 10:00 o'clock in the morning.

Q. There has been testimony to the effect that during the charge a note was written and passed by Judge Boyer to you. Now, do you have any recollection of any such incident?

A. No recollection whatsoever.

Q. There has been testimony, sir, that after you obtained this note you immediately or very shortly thereafter got up and stood in front of the bar of the Court waiting to be recognized by the Trial Judge. Do you have any recollection of that, sir?

A. No. The question is rather interwoven. I remember arising in connection with the charge. I was refreshed in my recollection from testimony in that respect yesterday although I have not yet read the notes of testimony. I mean the last person here. But I do not recall having received the note, or any relation between my arising and the reception of the note.

Q. There has been testimony that there were magazines and (890) newspapers observed being read by the various spectators in the courtroom at various times in the Darcy trial. What, if any, recollection have you as to that, sir?

A. I must make it part of my answer of course my attention was not in a great measure devoted to observation of the spectators in the courtroom, but I do not recall during the trial having observed anyone reading a paper or a magazine.

Q. There has been specific reference that at least one of the sessions there were observed copies of this magazine in the courtroom. Do you have any recollection of seeing any such magazine?

A. What is the exhibit —

Q. That is "Relator's Exhibit No. 136."

A. I do not recall having seen it.

Q. Were there any disturbances in the courtroom at any time during the trial of David Darcy?

A. I observed none.

Q. Was the courtroom at any time cleared by order of the Court?

A. It was not.

Q. There has been testimony that during the Foster-Zietz

Hon. Edward G. Biester—Direct

trial at sometime during that trial you spoke to a person who has identified herself, I believe, as an aunt—as a Miss Agnes Patterson, and—

BY JUDGE MURPHY: That was the aunt of Zietz or Foster?

BY MR. MARGIOTTI: I think it is Zietz's aunt.

BY JUDGE MURPHY: That was during another trial and not the Darcy trial.

(891) BY MR. VAN ARTSDALEN: That is right.

BY JUDGE MURPHY: That was the stoutest lady on the stand—none particularly stout. The stoutest one that was on the stand.

BY MR. VAN ARTSDALEN:

Q. — that during the course of that conversation with her you stated, in effect, that you were sorry that you had to say the things you did and that you would see that justice was done and that you would raise no objection before the Board of Pardons. Now, what, if anything, can you tell us of your recollection of any such incident?

A. I have no recollection of an incident of that kind unless at the time—and I would have to distinguish this—I want to be precise as near as my recollection permits—I talked to Foster, that is the defendant Foster's brother, outside of the vestibule, we did meet there, and doorway of the courthouse, and there was a woman with him at that time. In what place at the trial that took place, I have no recollection whatever. At that time Foster's brother asked me something to the

Hon. Edward G. Biester—Direct

effect as what might be done in the event that these boys were convicted or if they had been convicted and received the death penalty. I might—I mean being selective at that time I might have told him—and that was just what an attorney would answer, but I do recall that I told him "The matter might be taken up with the Board of Pardons." I said nothing at that time—agreed in that conversation to the effect that I would not oppose in connection with the hearing before the Pardon Board for commutation of sentence or a reduction of sentence to life imprisonment. That is my best recollection; I don't know if that is the conversation (892) that is referred to or not.

Q. I believe that same witness, Your Honor, testified to the effect that when you came over to speak to her you were crying or had tears in your eyes, or something of that kind. Have you any recollection at any time during the Darcy trial of crying?

BY MR. MARGIOTTI: We object to the Darcy trial. There was no contention he had tears in his eyes during the Darcy trial.

BY JUDGE MURPHY: Do you amend the question?

BY MR. VAN ARTSDALEN: I will amend the question.

BY JUDGE MURPHY: Mr. Reporter, read the question as amended striking out the reference to the Darcy trial.

(Question read by the Reporter.)

BY JUDGE MURPHY: Reframe your question.

BY MR. VAN ARTSDALEN:

Hon. Edward G. Biester: Direct

Q. At any time during the Foster-Zietz trial do you have any recollection of crying or having any tears in your eyes?

A. I have no recollection of it, Mr. Van Artsdalen.

Q. During the Darcy trial do you have any recollection of your closing speech to the jury?

A. In a general way, yes.

Q. Will you state whether or not you made any attempt to appeal to the emotions of the jury?

(S93) BY MR. MARGIOTTI: I object as not an issue in this case.

BY JUDGE MURPHY: Well, in view of the situation we have been rather broad in allowing the evidence. We will take the answer subject to the objection. There has been no allegation that there was any appeal to the emotions of the members of the jury, but we will take the answer.

Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY THE WITNESS:

A. I did not.

BY MR. VAN ARTSDALEN:

Q. Throughout the course of the Darcy trial did you observe were you on the public streets of Doylestown?

A. I was, but we were trying the case. When we were not trying the case, Mr. Curtin and I, we were often about there.

Q. Did you observe any disorders on the public streets of Doylestown?

A. I saw none.

Q. Will you state—tell us as to the number of persons that were on and about the public streets of Doylestown during the Darcy trial?

A. I have no independent or other recollection of there being more people assembled than are normally assembled during the weeks of Court trials.

Q. What, if anything, can you tell us as to the attendance of spectators at the trial of the Darcy case?

A. I can only say that the courtroom was never, to the best of my recollection—ever filled with people. There were a number (894) of witnesses present; there were a number of officers present; most of whom were witnesses. The courtroom was never full.

Q. Between the time of the shooting on December 22, 1947, up through June 15, 1948, do you know of any mass meetings or disturbances that were caused as a result of the shooting?

A. I know of none.

Q. Were any complaints made to your office as District Attorney concerning the same?

A. None.

Q. Now, Your Honor, there has been some questions raised in this case as to the reasons for the case being listed for trial when it was. What explanation do you have as to the times when these cases were listed for trial?

A. I must always preface or state this is my recollection of the situation, Mr. Van Artsdalen, in some parts of the answers I am certain. First, it should be understood there was at that time but two people in the District Attorney's office, the District Attorney and one assistant. In the trial of such a case as this we felt it preferable that the District Attorney and the Assistant both be present during the trial. This being so, it is obvious that we couldn't try other cases during the sametime, that is Mr. Curtin and I could not. I don't know the date of the Petition for Severance. My recollection is that it was after the Bill of Indictment was found, possibly in March —

BY MR. VAN ARTSDALEN: If the Court please, I believe that the record which has been introduced into evidence will show that was on March 1, 1948.

BY MR. MARGIOTTI: (895) If you say that is correct, I have no objection.

BY THE WITNESS: After that time it appeared then that it was likely that three trials would take place. It became necessary for us to determine how they were going to be tried—if they were tried at separate terms of Court and extended for more than a week, then three months would be taken up; assuming Mr. Curtin and Isat together in the trial, when no other criminal cases could be attached. With that in mind and with the secondary matter in mind that one of the persons who was present in the tap room on that night was in serious physical condition—I believe his name is Hellerman—that these cases should be dispatched as promptly as was possible for the interests of justice so that we might be sure that that witness would be present, and the day after the severance we had conferences with counsel for the various parties and told them in what order the cases were to be tried. We didn't know whether the Foster-Zietz case we fixed first would take a week or more than a week, but it was then arranged, not during the week of the Foster-Zietz trial but considerably prior thereto, that when that case was completed, if it be completed during the first week, the Darcy case would follow the next week. If it wasn't completed during that week, then it would go on to the following week. That was, I will say, definitely determined prior to the time the Foster-Zietz case was attached.

Q. You have referred to a witness by the name of Allen Hellerman. Do you know what has since happened to him?

A. I have been advised that he is now dead.

BY MR. VAN ARTSDALEN: (896) Will the Court bear with us for just a moment?

Q. Do you have any recollection of the sidebar conference which appears in the record of the Darcy trial at which there was a colloquy between Webster Achey and Judge Boyer?

A. I had a recollection of it which I have refreshed by looking at the notes of testimony in that testimony which I had sometime, I believe, last week. I do recall the circumstances——

Q. And will you explain those to us?

A. On that day of the trial Judge Boyer was sitting with Judge Keller. I did not refresh my recollection as to what day of the trial or the time of the day of the trial. There was some discussion of a point of law involved regarding evidence. Mr. Achey and I—and, I think, Mr. Power—stepped to sidebar where we argued without the hearing of the jury in low tones the question which was involved addressing ourselves to Judge Keller. During the course of the discussion Judge Boyer leaned over and made a point of some thinking in his mind to Judge Keller, and Mr. Achey then objected to Judge Boyer's having done so. Judge Boyer, I believe, very shortly after that time left the bench first saying to counsel, however, that he thought the Court might confer without asking the acquiescence of defense counsel before doing so. Nevertheless, in view of Mr. Achey's remark, he left and I don't believe he returned during any time of the trial following on the bench with Judge Keller insofar as the trial itself was concerned.

Q. At any time during the Darcy trial did Judge Boyer assist you in any way in the presentation of the evidence in the trial of the case?

A. I have no recollection of such a situation at all, Mr. Van Artsdalen.

Mon. Edward G. Biester—Cross

(897) BY MR. VAN ARTSDALEN: If it please the Court, that is all the questions we have of Judge Biester. I think if Judge Biester has any further statements to make to the Court in connection with this case, he should be afforded an opportunity to do so.

BY JUDGE MURPHY: If he desires to make a statement, he may.

BY THE WITNESS: I have no further statement to make unless there is some point or inquiry counsel or the Court is interested in.

CROSS-EXAMINATION

BY MR. MARGIOTTI:

Q. Who did you say appointed you?

A. The then Governor.

Q. Was that Governor Duff?

A. Yes sir.

Q. And have you qualified before the people for election since that time?

A. I have been.

Q. You have been elected for a ten-year term?

A. I have.

Q. Judge, you testified that you were present when the jury was selected, is that right?

A. Yes.

Q. In your best recollection—or at least that testimony was to the effect that after one, two or three jurors had been selected——

A. I would say so.

Q. He is saying three. That is the only reason I am saying

(898) three. If I am wrong, Judge, please correct me. After one, two or three had been selected they were taken out of the courtroom?

A. Yes.

Q. Where were they taken to?

A. Into a room adjacent to the courtroom itself.

Q. Was that the library?

A. It is one of the library—it might be called a library room.

Q. Is that the library immediately to the right where the jurors sat as shown in that sketch, "No. 135?"

A. There are two rooms—

Q. Would you mind looking at that sketch? Do you see that room marked "Library"? What is that—"Attorney's Room"?

A. It is marked "Attorney's Room." I will try to explain that to you, sir. There are two rooms there. There is one that is called—we refer to it as the "Attorney's Room," although it is not part of the library in the sense that there are books there. There is a room immediately adjacent to it which is a library as distinguished from the "Attorney's Room."

Q. Was that the room that they were taken to?

A. The room I also referred to is the room, to the best of my recollection, where they were.

Q. Judge, after each juror was selected do you say the juror was then taken to this room to meet the other selected jurors?

A. I didn't say precisely that. I said after one, two or three had been selected that is what happened.

Q. That is right. You did say that. When Juror No. 4 was selected what happened to him?

A. Then he would join those others.

Q. That is what I meant.

(899) Now, do you recall that after three of the jurors had been selected that they were in their seats in Court when one of the jurors being examined on his voir dire made a statement that "This was one of the most cold-blooded murders he had

ever heard of," and to refresh your recollection, there was a motion then made for the withdrawal of a juror and a continuance of the case?

A. I remember that incident occurred, Mr. Margiotti, but I don't know whether it occurred prior to the time that those jurors then selected and accepted left the courtroom or not. I simply don't remember.

Q. If I were to tell you that the record shows that occurred after the third juror had been selected—or if I were to show you the record showing that, would that refresh your memory?

BY JUDGE MURPHY: You are talking about two different things—when the jury was taken out of the box or when the Westlake remark occurred. That is what you are asking about.

BY MR. MARGIOTTI: I will withdraw the question. I think the Court is correct.

Q. Have you looked at the record since that time, the voir dire of the jurors?

A. At the time of the appeal to the Supreme Court I know I must have looked at it.

Q. Like most lawyers, you might have forgotten it, too?

A. That is true.

Q. I am going to show it to you, Page 97.

A. What is the question?

(900) Q. I haven't asked you one yet.

A. I have looked at it.

Q. Isn't it a fact that the juror Westlake while three jurors who had been selected that were present in Court and seated in their chairs said "This was one of the most cold-blooded murders he ever heard of"?

A. There are two parts to it. I don't want to fence on it. I want to answer you as nearly as I can —

Q. I know that.

A. I can recall that answer having been given in response to an inquiry, but I don't recall whether that was either before—was the occasion for or was after the time that method of having the jurors withdrawal take place.

BY JUDGE MURPHY: At Page 189—if you are looking for it.

BY MR. MARGIOTTI:

Q. Now, isn't it correct that after eight jurors had been selected that it was at that time that His Honor, the— isn't it correct that after eight jurors had been selected you asked that the jurors be segregated, those who had been selected?

A. I don't know and I don't recall. If that is what the testimony indicates, that must be so.

Q. Yes, it does, Judge, but I will let you read it. I don't want you to take my word for it. I will let you read the record. I am showing you Page 189—and you better read Page 190 too.

A. That apparently is correct, Mr. Margiotti.

Q. Then after eight jurors had been sworn and the entire eight had listened to the examination of other jurors on their voir dire—after that much had been sworn—you made the motion (901) in which you stated that:

“Yesterday during the calling of the jury on the voir dire one of the prospective jurors made a statement which Mr. Achey felt was inimical to his case . . . and you then

“ . . . asked that the eight jurors who have been called in the box be excused so nothing of that kind can happen again . . . ” You were taking that precaution. Mr. Achey objected, saying that he didn't think there was precedent for locking up the jury or keeping them out of the courtroom after they had been asked

or accepted to sit in this trial; and the Court saying "They haven't been sworn," and that is all that took place. The Court did not lock them up, didn't take them to another room or did he deny your request? When you made the request, Mr. Achey objected; you made the request and Mr. Achey objected.

A. My best recollection is that some time—if the record discloses that my recollection is erroneous, it would stand—my recollection is still at some time during the course of the trial that arrangement was made.

Q. Isn't it a fact that the Court in answering the objection that was made—in answering that motion, simply said "They haven't been sworn," and took no further action?

A. I don't know what the Court said. My recollection is that obtained at some time during the course of the trial.

Q. I ask you to look at Page 190.

A. Yes.

Q. The Court said "They haven't been sworn," is that right?

A. That is right.

(902) Q. Now then, isn't it a fact that the examination of the jurors on their voir dire went on until the entire jury was selected in the presence of each one that had been selected?

A. I thought not, Mr. Margiotti, but it may have occurred as you suggested. I know there was some discussion about it. I thought the Court then had them removed to the other room.

Q. And, Judge, isn't it a fact, that after the last alternate was selected, who would be No. 14, that the jury was sworn as a whole?

A. Yes; that is as I recall.

Q. And after they were sworn as a whole they were taken in to the lawyers' room or the library; or whatever room it was that you referred to?

A. You mean that was the first time it occurred—I mean I don't know whether they were taken to the lawyers' room or not, or whether we proceeded with the trial.

Q. Well, let me put it this way—this may refresh your memory: Isn't it true that they were all examined and those who were accepted took their places in the jury seats and after fourteen jurors were selected that there were two additional tipstaves sworn in and—Mrs. Van Sant and Mr. Gahman, and then the jury went out to the scene of the crime?

A. That occurred, yes.

Q. So that the jury did remain in the courtroom while all other jurors were being examined; so far as each particular juror was concerned, he would only remain for the ones that were selected after him, not for the ones before him, of course?

A. It is possible that occurred. I would not say with certainty one way or the other —

(903) Q. Look at Page 70.

A. 270 —

Q. 270.

BY JUDGE MURPHY: What page?

BY MR. MARGIOTTI: 270 and 272 and 271.

BY JUDGE MURPHY: Read the question, Mr. Reporter.

(Question read by the Reporter.)

BY MR. MARGIOTTI: I withdraw the question.

Q. So that each juror remained in the courtroom after being selected listening to all subsequent voir dire examination until the jury was selected? That is what I had in mind.

A. That may be so. My recollection was to the contrary.

Q. I appreciate that. I am not saying that we deliberately made a misstatement. From that record now since you have looked at that record and you have looked at Pages 270, 271 and 272, what do you say?

A. What do I what —

Q. What do you say since you have looked at the record?

A. I would say that after the jury was in the box —

Q. Go ahead. I don't care to have you read what is there except to yourself and then give me your view—your answer to the question as propounded —

BY JUDGE MURPHY: As we understand it, the problem is this: There were some jurors who were selected whereupon Mr. Westlake, called (904) as a prospective juror, made some remark, and then there was a motion for the withdrawal of a juror because of the remark; the motion was denied and the three jurors selected cautioned not to pay attention to it, not to follow it, whereupon they called additional jurors and when eight jurors were selected you came into Court the next day and moved that the eight be placed in another room until the completion of the voir dire of the remaining four and the other two subsequently was completed.

The record does not show in the transcript of testimony whether the jury, the eight, were removed from the room while the remaining members of the jury were selected or not, and the question is were they, or weren't they?

Mr. Margiotti has shown you the paper which says that the jury was sworn as a whole when the fourteen were selected and that they thereafter went to the view. The question is does that refresh your recollection sufficiently so that you can now say were the eight, or any portion thereof, jurors taken from the box and put in another room while the remaining jurors were questioned on their voir dire —

BY MR. MARGIOTTI: Not the eight.

BY JUDGE MURPHY: Those already selected. Were those already selected, whatever number it was, removed from

Hon. Edward G. Biester—Cross

the room while the remaining jurors were selected, or were they there throughout the entire voir dire of all the jurors?

BY THE WITNESS:

A. I can only answer it in this way: My recollection was during (905) sometime in the trial that some of the jurors then selected were removed. It may have been that I was confused by the fact that I so moved that it be done. Whether it was done or not, I simply am not clear about, Mr. Margiotti.

BY MR. MARGIOTTI:

Q. Thank you —

BY JUDGE MURPHY: We will take our usual morning recess.

(Recess.)

(Court resumes after the recess with the parties, including the Relator, David Darcy, present in Court.)

HONORABLE EDWARD G. BIESTER, recalled.

CROSS-EXAMINATION (Continued).

BY MR. MARGIOTTI:

Q. Judge, were you a subscriber to the local papers?

A. Yes sir.

Q. Did you read the Doylestown paper "The Intelligencer"?

A. I read it, yes.

Q. And that paper comes out daily, doesn't it?

A. Yes.

Q. Did you read the editorials in that paper?

A. I suppose you are referring back to the time of these trials—I don't know whether I read a particular editorial or whether I didn't.

Q. Not only at the time of the trials but before the trials.

A. I read the paper. I never read it from cover to cover. I don't know whether I read any particular editorial or not.

Q. Did you read any other local papers? By "local," I mean Bucks County papers.

A. No.

(906) Q. Did you read any other newspapers carrying stories of the Feasterville killing?

A. Well, we have for years been receiving the Philadelphia papers, the Evening Bulletin and the Inquirer. I must have read them, yes.

Q. Did you listen to comments on the radio?

A. I think not.

Q. Did you see any television pictures of the defendants, particularly Darcy?

A. No.

Q. Now during the testimony produced in the case, without going over it specifically, in a general way, was very much alike in Foster-Zietz case as it was in the Darcy case?

A. Yes.

Q. And the testimony in the Foster-Zietz case was published either as a summation or in a question and answer form in the Doylestown paper?

A. I believe that is right, yes.

Q. And you knew that was going on?

A. Yes.

Q. And you say that the Foster-Zietz trial was fixed when—when did you first schedule it?

A. I don't remember the precise day.

Q. I think you said "after they were attached," you used the word "attached"?

A. No. I said that the Darcy case was fixed prior to the time the Foster-Zietz case was attached, in the sense not as the precise date but that it would follow.

Q. By "attached" you mean when the two cases were joined together, I assume?

A. When they actually came to trial.

(907) Q. When they actually came to trial?

A. Yes.

Q. You used the word "attached." What would be another word for it? What word would be synonymous to "attached"?

A. When it attached—was arranged and we were ready for trial.

Q. I see. And so that at the time Foster-Zietz were called for trial it was at that time that you fixed or scheduled the Darcy trial?

A. It was prior to that time, Mr. Margiotti.

Q. How long prior?

A. I can't be precise. I would say it was a matter of probably two or three weeks, but I am not sure.

Q. When did you fix the Foster-Zietz trial?

A. At the same time.

Q. At the same time. Now in fixing these cases for trial how would the defendants or their attorneys, or the public, know when these trials were coming up?

A. Our case papers. In each instance counsel for the defendants—it was in connection with the fixing of them we discussed it with counsel for the defendants. I don't know of the defendant himself in any instance knowing it. I don't recall advising them directly except talking with counsel. I don't know how the public would have known of it.

Q. Do you recall making public announcements of the trials?

A. No sir.

Q. And so far as the scheduling of the trials was concerned, it was strictly within your prerogative?

A. Yes, with some attention to other business of the Court. The Court would also, I take it, have to find that acceptable.

Q. Then you would fix the date with the provision of the Court?

A. That is right.

(908) Q. Assuming that the Court agreed to the date?

A. That is right.

Q. Isn't it a fact that you set the Foster-Zietz trial for the May Term?

A. Yes.

Q. And isn't it a fact that you announced to the newspapers that the Darcy trial would not be tried that term but the following term?

A. I believe not.

Q. Didn't you anticipate that because you were trying the two defendants together, you couldn't do any more than try that case that term?

A. No.

Q. Do you remember on May 14 reading the Doylestown paper in which it was substantially stated that the Foster-Zietz trials would be held during the May term and that the Darcy trial would be held at a later term?

A. No.

BY MR. MARGIOTTI: We are looking for May 14.

Q. Judge, I am going to call your attention to "Relator's Exhibit No. 51," particularly to an article "Four Murder And Four Manslaughter Trials Listed." It is an article dated under a front-page article, center of the page, in the Doylestown Daily Intelligencer of Friday Afternoon, May 14. Would you please read that?

A. I have read it, yes.

Q. Now, Judge, this article says:

"Four murder cases are listed on the docket for the May term of county criminal court that opens next Monday, (909) but only two will be tried during the approaching term.

"The two murder cases for trial are those of Harold Foster, 23, and Harry Zietz, 18, both of Philadelphia. They will be tried for their alleged part in the murder of William Kelly, 38, of Trevoise, last December, when four youths held up a tap room and started shooting after a \$425 robbery.

"Two others, David Darcy, and Felix Capone, will be tried later?"

A. Yes, that is what the article says.

Q. Did you give that information to Mr. Thomas or anybody representing "The Intelligencer"?

A. No, I don't recall it.

Q. You don't recall. What is your best recollection on the subject—that you did or you didn't?

A. My best recollection is I didn't.

Q. Yes. And who was the contact man or the public relations man in your office who gave out the news in your office to the newspapers?

A. I don't know that anyone gave news out. We didn't—weren't contacted by a newspaper as a general proposition—no publicity man, certainly.

Q. Was there any rule laid down by you as District Attorney as to who in your office, whether it be yourself or an assistant, should give out publicity when publicity was to be given out?

A. No.

Q. Did you give out news yourself at times?

A. I don't know exactly in what connotation you mean that. I don't recall I have volunteered to the newspaper man and suggested (910) he publish certain things. If inquiry were made of me, I would furnish them with the information.

Hon. Edward G. Biester—Cross

Q. That is particularly what I meant. If a newspaper man came to you and asked you questions, you would furnish the information?

A. In some instances, I have, yes.

Q. Yes sir. Now, do you know Mr. Thomas?

A. Oh yes.

Q. Do you know Mr. Trauch?

A. Oh yes.

Q. Did they cover the Darcy trial?

A. I don't recall, but I think quite likely.

Q. Do you remember seeing them in Court?

A. One or the other or both were there, yes.

Q. At that press table?

A. Yes, I believe so.

Q. Do you recall seeing them in Court during the Foster-Zietz trial?

A. Specifically as recalling their having been there, Mr. Margiotti, I don't, but it is a natural assumption that they were there.

Q. That is right. Now I am going to call to your attention "Relator's Exhibit No. 55," being the front page of the Doylestown Daily Intelligencer—pardon me! I will withdraw that question.

Did you see this article that is now called to your attention, "Relator's Exhibit No. 51," before you came to Court?

A. I don't recall.

Q. Do you remember seeing it during—about the time it appeared in the paper?

A. No; not that specific article I don't recall.

(911) Q. You don't recall. Do you recall whether you called the Doylestown Daily Intelligencer or had somebody call them to state that the paper was in error about the schedule of the cases?

A. I don't believe I did so or had anyone do so.

Q. I show you "Relator's Exhibit No. 55," being the front page of the Doylestown Daily Intelligencer of the date of Monday Afternoon, May 24, and I refer you particularly to the article on the right-hand column.—

A. Left-hand —

Q. — left-hand—pardon me—left-hand column headed "Easterville Murder Case Defendants Go On Trial." Would you please read that?

A. Yes, I have.

Q. Now May 24 was the day that Foster and Zietz trial began?

A. That is correct.

Q. And according to this article, there was a statement—that carries a statement on the front page:

Q. Only two of the defendants charged with the murder will go on trial this term.

Q. They are 18-year-old, red-headed Harry Zietz, of Oakland St., Phila., who is alleged to have fired the shot that fatally injured Kelly; and Harold Foster, 23, of Teasdale St., Phila.

Q. The other two defendants, David Darcy, 22, and Felix Capone, 16, will be tried at a later term of court?"

A. Yes, that is what the article says.

Q. That is what the article says. When would the next term have been?

A. The September Term of Court.

(912) Q. The September Term of Court. Your May Term runs then until September?

A. That is correct.

Q. And did you give out this information to the newspaper?

A. I think not.

Q. Did you see this story in the Doylestown Daily Intelligencer?

A. I don't recall whether I saw it or not. To answer you I must say that it is very likely I saw it, to be entirely fair, but I don't recall specifically seeing it.

Q. Do you recall whether or not you called to the attention of the newspaper or their reporters any inaccuracy in the story?

A. I don't recall having done so. I don't know whether—may I answer an additional not too indirect—I might suggest to you the terms of Court and that expression for those people known as lawyers and judges —

Q. That is correct.

A. — and terms of Court as we understand them in legal parlance may be different than the layman's understanding would be. They may think a term of Court is when a jury is summoned for the trial of a case.

Q. The newspaper man with many years' experience around Court generally knows what a term of Court is?

A. Well, I can't answer that.

Q. Well, this case of Foster-Zietz ended on Thursday—or Friday, rather, is that right?

A. I don't recall. If you say so, I will accept that.

Q. Don't you remember it was a Friday?

A. I heard the testimony and I am reasonably sure that is correct, but I haven't checked back in these records.

Q. Do you remember? If you do not recall it, I will get the exhibit, a copy of the Doylestown Daily Intelligencer of June 5, (913) which carried comments—alleged comments of Judge Boyer to the jury in connection with the Foster-Zietz trial.

A. You are asking me whether I remember that issue of the paper —

Q. Yes.

A. No sir.

Q. Do you remember seeing that in the paper?

A. No, I do not.

Q. I show you now the issue of June 5 of the Doylestown Daily Intelligencer, "Relator's Exhibit No. 78," and call your particular attention to the article on the right-hand side

headed: "Judge Boyer Praises Jury For Verdict Condemning 2 Killers To Electric Chair." Please read that—and read to the end of the quotations by Judge Boyer. Then I will ask some questions. You don't need to read the whole article unless you want to.

A. Yes, I have read it.

Q. Have you seen that before?

A. I can only answer you this way, Mr. Margiotti: It is extremely likely I read this, but to ask me whether I read a particular article on June 5, 1948 in the Doylestown Daily Intelligencer, I cannot say yes specifically. I think it is fair to assume that I did read it at the time.

Q. I see. All right. Now then, Judge, was there any effort made by you, or the Judges of that County, to persuade the lawyers to try all these cases together, the four of them, in the interest of saving costs to the County?

A. I don't recall.

Q. Wasn't there some effort made to get through with the cases as fast as possible and once you got started, of course, complete the cases?

A. As to these specific cases —

Q. Yes.

(914) A. I should say no.

Q. Now if this case ended—do you remember, Judge, whether or not the week of June 7 the high school of that community had scheduled commencement exercises in that courthouse?

A. No, I don't, but again I will have to answer you that the high school usually had its exercises there. When it was probably fixed, I don't know, and it would be about that time of the year.

Q. Yes. I call your attention now to the issue of March 1 of the Doylestown Daily Intelligencer, and particularly to an article appearing near the center of the front page headed: "Charged With Murder, Asks Separate Trials."

A. Yes, I see it.

Q. Is your answer with reference to this article the same as it has been to the others?

A. That is correct, yes.

Q. Yes —

BY JUDGE MURPHY: Exhibit No., Mr. Margiotti —

BY MR. MARGIOTTI: "Relator's Exhibit No. 43."

Q. "Petitions for severance, asking for separate trials in the cases of David Darcy, 22, and Felix Capone, 16, charged with murder, were filed this morning in court.

"They are two of four Philadelphia youths charged with the murder of William Kelly, 38, of Trevoze, last December 24, outside the Feasterville Tavern, following a hold-up; . . ."

"Judges Hiram H. Keller and Calvin S. Boyer asked that the matter be heard in further detail this afternoon, in an effort to have a combination trial if possible, covering all defendants . . ."

Did that occur?

(915) A. I don't recall it.

Q. " . . . Counsel for Darcy and Capone, however, stood on their legal rights, and stated that they would ask for separate trials as provided by law in cases of murder.

"The Court commented, 'Separate trials in these cases will mean that it may take a year to dispose of the cases' . . ."

Did that occur?

A. I don't recall.

Q. Were you in Court when any remarks such as those were made?

A. I don't remember it, Mr. Margiotti—I really don't remember it.

Q. Now after the jury brought in its verdict in the Foster-Zietz case, were you in Court?

A. Yes.

Q. Were you there when the judge addressed the jury?

A. I believe so.

Q. When Judge Boyer addressed the jury?

A. Yes.

Q. Did you hear his remarks to the jury?

A. Yes.

Q. Did you take down the remarks that he made to the jury?

A. No, I did not.

Q. Do you know whether they were recorded by anyone?

A. I do not.

Q. This is after the verdict, of course?

A. Yes.

Q. Do you know whether it is customary in your County to record remarks of the Court after a jury returns a verdict?

A. It is not customary.

(916) Q. It is not customary. Then do you know whether or not the remarks attributed to him in "Relator's Exhibit No. 78" were made or not?

A. May I see it, please —

Q. Yes. They are in quotations.

A. My best recollection is that Judge Boyer said something very like that or that itself, Mr. Margiotti, at the conclusion of the trial. I know I do recall that he did commend the jury.

Q. Now, Judge, that was on Friday and this article on Saturday; Darcy was to be tried Monday morning and selection of the jury started on Monday morning. Was there any application made or suggestion by anyone for a continuance of his case at that time?

A. No, there was not.

Q. Did you make any suggestion or application as District Attorney for the continuance of the case?

A. I did not.

Q. And to a later date, of course.

Isn't it a fact, Judge, that the Darcy trial was really scheduled and definitely scheduled just before you went to the jury in the Foster-Zietz case?

A. You mean—the beginning of the closing of the Foster-Zietz case —

Q. Just before you started the closing addresses when the testimony was closed and just before you went to the jury to make speeches?

A. I think not.

Q. I want to call your attention to "Exhibit No. 93," also being the Doylestown Daily Intelligencer of June 11, 1948, and particularly the last note under "We Noticed" here.

A. Yes, I have seen this.

(917) Q. Had you seen that before?

A. As to before, I don't know; it isn't unlikely I saw it; I don't recall.

Q. This article reads:

"In a Philadelphia newspaper column, the following excerpt: 'So many murder trials are cluttering the Bucks county criminal docket that Doylestown High School graduates won't be able to hold their commencement exercises in the ancient court house. Instead they will be graduated outdoors.'"

Do you know that their exercises were scheduled for the week of June 7?

A. I don't recall, but I think it is very likely.

Q. And do you know that the exercises were held outdoors, or don't you?

A. I don't know.

Q. Now, Judge, did you have anything to do with the prosecution of Robert White of 8388 Bustleton Avenue, Philadelphia?

A. I have no idea.

Q. Except that the case was in your office?

A. I have no idea.

Q. I show you now "Relator's Exhibit No. 94," and I call your attention to an article headed: "Judge Boyer Warns That Bucks County Is Tired Of Thieves From Phila." —

BY JUDGE MURPHY: What is the date?

BY MR. MARGIOTTI: The number is "No. 94," the date is June 12, 1948.

BY THE WITNESS:

A. Your inquiry is what, Mr. Margiotti?

(918) BY MR. MARGIOTTI:

Q. Calling that article to your attention and I want to know whether that article refreshes your memory in any way.

A. To the extent as to whether I personally prosecuted

Q. Whether or not you know about that case being in your office.

A. No, it does not refresh my memory.

Q. Were you present when any of the events stated in that exhibit occurred, or are alleged to have occurred?

A. You mean when the remarks of Judge Boyer were made —

Q. Yes.

A. I think not. My recollection—and I must say this is because I refreshed my recollection from something was said to me—is that now Judge Satterthwaite was asked to handle several cases on behalf of the Commonwealth, and that was one of those that he did —

Q. According to this article, it was Judge Boyer?

A. Judge Satterthwaite was then not a Judge.

Q. I see. I beg your pardon! He was acting as an Assistant District Attorney?

A. Yes. That is what I am advised, sir. I say I have no independent recollection.

Q. At the end of the testimony in the Foster-Zietz case and before the defense counsel went to the jury, do you remember whether Judge Boyer made some statement that "Now we will be able to try the Darcy case next week?"

A. No, I don't recall.

Q. Is your charge—I am finding out by going by, but maybe we can save time by my asking: Was your address to the jury made a part of the record?

(919) A. In this case, no, it was not.

Q. You say that Judge Boyer—it was the custom during the trial of the case to join Judge Keller, is that right?

A. It was the custom to join him on the bench at the inception of the affairs of that day, yes.

Q. And when Court convened in the morning with the two Judges on the bench, where was the jury in the Darcy case?

A. I don't remember, Mr. Margiotti.

Q. Were they in their places?

A. You want to know were they in their places, or whether they weren't—as to what the practice was, I simply have no recollection.

Q. You don't remember whether they were in their seats or whether they had not been brought to their seats yet?

A. I don't recall.

Q. Now you have stated that on several occasions, at least, that the purpose of that was to handle miscellaneous business?

A. That would be his reason for first joining him, yes.

Q. First sitting on the bench?

A. Yes.

Q. Do you recall of any particular business—of any single business that was handled during the Darcy trial by the two Judges.—

A. No, I do not.

Q. — which would come within the classification of miscellaneous business?

A. I do not.

Q. Now you have stated too that he usually withdrew when the trial of the case was in progress?

A. Yes.

Q. The trial of which case was in progress?

(920) A. The trial of the murder case.

Q. The Darcy murder case?

A. The Darcy case, yes.

Q. Was that in the presence of the jury?

A. Yes.

Q. And was the jury in a position where they could see the Judge on the bench and withdrawing?

A. Yes.

Q. Will you tell me on these several occasions that you say he withdrew, the Judge, how long he remained on the bench after the miscellaneous business had been transacted?

A. No, I can't tell you. It would vary. I think there were some days when Judge Boyer sat there for probably an hour at a time, but I think his stay there was usually brief.

Q. And during the time that he was on the bench was evidence being presented in the Darcy case by the Commonwealth?

A. At times, yes.

Q. And will you state during those times while evidence was being presented whether there were any objections to the admission of testimony?

A. I have no independent recollection except that I think there was an objection in connection with this colloquy at sidebar. I haven't examined the record back to determine what brought it about, but my assumption is there was some objection to some offer of the Commonwealth.

Q. Weren't there other objections before that?

A. I don't know.

Q. Didn't Judge Boyer on occasions confer in a low tone so that other people couldn't hear with Judge Keller?

A. Oh yes.

BY JUDGE MURPHY: (921) You mean that he conferred on rulings in the Darcy case?

BY THE WITNESS: I don't know what he conferred about. I didn't hear what they were talking about. I know they sat together and they would occasionally talk to each other. I don't remember except in connection with this particular situation that has been marked at sidebar. I think there was a question of evidence involved.

BY MR. MARGIOTTI:

Q. The reason you remember that particularly is because there is a record of it?

A. That is it exactly.

Q. There is no record of any other conferences between the Judges?

A. No, there is no record.

Q. Where did Judge Keller sit?

A. Well, there was then but two chairs. He sat on the one to the left, the one nearer to the jury.

Q. How close were they?

A. The two chairs —

Q. Yes.

A. I should estimate approximately four feet apart, something like that.

Q. Approximately four feet apart. Oh, by the way, as to Judge Keller, did he at that time unfortunately have some infirmities?

A. Judge Keller, since a very young man as a result of an accident has been blind in one eye.

Q. He is blind in one eye?

A. Yes.

Q. Which eye, do you know, Judge?

(922) A. I don't know.

Q. Isn't it his right eye?

A. It may be; I don't know.

Q. Is his hearing good?

A. His hearing in recent years is not as keen as it was when he was younger.

Q. How was his hearing at the time of the Darcy trial?

A. You mean was he at that time deaf or had impaired hearing —

Q. I didn't say he was deaf —

A. I don't know how to answer your questions as to his hearing. I think it was reasonably good.

Q. Reasonably good?

A. Yes.

Q. And at that time did he have this blindness in one eye?

A. Certainly, he has had that, as I say, since he has been a young man.

Q. Now on the occasion of this sidebar conference which appears on Page 800—which begins on Page 830—while it begins on Page 829, you begin your discussion on Page 830—maybe we better give him a copy of this —

BY MR. VAN ARTSDALEN: This is a copy of the original record.

BY THE WITNESS:

A. I have Page 830 before me.

Hon. Edward G. Biester, Cross

BY MR. MARGIOTTI:

Q. Page 830:

“(Discussion at side-bar.)”

First comes the statement by you covering practically the entire page; then comes a statement by Mr. Achey in which Mr. Achey—you offered to prove “CX-71”—what was “CX 71,” do you remember off-hand, Judge?

A. Oh, no; certainly not.

(923) Q. Is there anything that follows after the Court overruled the objection that would refresh your memory? It has been suggested by Judge Pannell that Page 841 might help you—yes; it does.

A. Referring to the record, it was evidently a joint statement of the defendants Zietz, Darcy, Capone, and Foster.

Q. Now you offered to prove that statement; then you gave your purposes; is that right?

A. Yes.

Q. And that involved the question of evidence in the commission of other crimes?

A. Yes.

Q. And Mr. Achey objected to that?

A. Yes.

Q. And Judge Boyer said in reply to him: “That applies only to cross-examination?”

A. That is what the record states, yes.

Q. And it was at that time that Mr. Achey said: “I object to Judge Boyer sitting in on this case. I don’t mind trying against one Judge ——?”

A. Yes.

Q. Did he use that word—“... trying against one Judge?”

A. I don’t recall the precise language. I have no reason to quarrel with the recorder’s notes on it.

Q. And then Judge Boyer said: "The Judges reserve the right to confer without being obliged to get the consent of defense counsel"; then the objection of Mr. Achey was finally overruled by the Court, and it says: "The Court: The objection is overruled." Who was speaking for the Court, do you know?

A. Only by practice that when it says "The Court" throughout the (924) notes of testimony it refers to the Trial Judge who would be Judge Keller.

Q. All right; do you know how long Judge Boyer had been on the bench when this particular incident happened?

A. No recollection whatever, Mr. Margiotti.

Q. Do you know whether it was five minutes or one hour?

BY MR. VAN ARTSDALEN: I object.

BY THE WITNESS:

A. I don't know.

BY MR. VAN ARTSDALEN: The witness has already answered.

BY THE WITNESS: I do not know.

BY JUDGE MURPHY: The witness has already answered; he answered again.

BY MR. MARGIOTTI:

Q. You don't know. Do you know whether he remained on the bench for an hour after that?

A. I do not.

Q. Well, that part of the—that event occurred toward the end of the testimony, didn't it—the taking of the testimony?

Hon. Edward G. Biester.—Cross

A. It is subject to arithmetical computation; I don't know. I take it this is all the fifth day of the trial that I have before me. It is marked "Fifth Day."

Q. I state I don't know.

BY JUDGE MURPHY: I state for the benefit of both of you there are three volumes.

BY MR. MARGIOTTI: (925) If the Court please, this record shows—this is only for the convenience of the record—the occurrence takes place on 831 and the end of the testimony is 863 at 1:30 P. M.; then starts the Charge of the Court.

Q. Now you have stated, Judge Biester, that there were times when the Judge was not otherwise engaged in the business of the Court—meaning Judge Boyer—on several occasions sat on a chair near the Judges chambers, and that chair you indicated on the "Relator's Exhibit No. 135" as being the chair marked "Judge Boyer"?

A. That one or one immediately near to it.

Q. That is right. Now when you say it happened on several occasions, what is your—what do you mean by "several"?

A. I am afraid as I used it there it is a general term without preciseness. As to whether it was three—four—five—or how many times, I can't fix the number of times. I would say that when I say "several," it was three or more.

Q. Three or more. And in that position, Judge, was he within the full view of the jury?

A. Yes.

Q. Judge, in the affidavit, which the Commonwealth sought to file in this case, in Paragraph 9 you said:

"That, to the best of the recollection of this affiant, at no time during the course of the trial did Judge Boyer assist, attempt to assist, make suggestions to, or otherwise aid the

Commonwealth in the trial of the case, nor pass any messages to this affiant in connection with the trial of the case for the use of this affiant or Judge Keller."

You still stand by that, don't you?

A. Yes.

(926) Q. And that is what you meant by your testimony when you were examined in Chief?

A. Yes.

Q. Judge, do you recall that toward the end of the charge Judge Keller said: "Have I overlooked anything? Are there any corrections to be made?"

A. It is fair to assume he said it. I think he says it in almost every trial, and it is in the notes of testimony.

Q. And as a general proposition upon making that statement he would look at counsel on both sides and wait for their answers if they—if they had any answers to make, before proceeding further —

BY MR. VAN ARTSDALEN: I don't believe there is any question there. It is a statement.

BY MR. MARGIOTTI:

Q. Didn't he then after making that statement pause and wait for an answer?

A. I presume he did.

Q. And isn't it true that Mr. Achey did make an answer?

A. According to the notes as I heard them read yesterday, yes.

Q. Yes. It says—we will give you a copy of this so that you can follow as we go along. Mr. Achey said: "Nothing for the defendant. Your Honor?"

A. Yes.

Q. At that time you said nothing?

A. Apparently that is true.

Q. What was that?

A. Apparently that is true. I don't recall saying anything. Nothing appears on the record.

(927) Q. You had an opportunity to talk right then and there if you wanted to, didn't you?

A. Yes.

Q. Then the Court went on with what appears to be the conclusion of his charge. Do you observe that?

A. Yes.

Q. And then there appears to be a statement by you?

A. Yes.

Q. When you made that statement where were you?

A. I believe I rose in courtesy to the Court and came to in front of the bar of the Court.

Q. In front of the desk?

A. Yes, in front of the desk.

Q. And when did you make your mind up to go before the bench to make that statement?

A. I don't know.

Q. Was it while the Judge continued to close his charge or was it at the close of his charge?

A. That would be purely a matter of rationalization in memory; I don't know.

Q. You don't know. Why would you present this argument to the Court when he asked in the first place, "Have I overlooked anything? Are there any corrections to be made?"

A. I cannot delve into my memory on that; I don't know.

Q. Then the Court made a reply to you—this is on top of Page 906, two paragraphs, and then you answered—your last words were:

"I am sorry, but I don't think that would be beyond a reasonable doubt, that it would be on the preponderance of the evidence that it was during the commission of a robbery. I

think Your Honor inadvertently said that they (928) would have to believe that beyond a reasonable doubt —”

A. Yes.

Q. “... that it was not.”

And the Court said: “If I did, that will be withdrawn.” Now when did you make up your mind to make that statement?

A. I presume immediately after Judge Keller made his statement which I was not in accord with.

Q. I see. Hadn't the Judge covered the reasonable doubt in his charge?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will take it.

BY THE WITNESS:

A. Yes, he had.

BY MR. MARGIOTTI:

Q. And what was there to cover by the preponderance of the evidence?

BY JUDGE MURPHY: If you can recall.

BY MR. MARGIOTTI:

Q. If you can recall.

A. I don't recall, Mr. Margiotti.

BY MR. MARGIOTTI: Judge, thank you and that is all.

(Witness excused.)

BY JUDGE MURPHY: Now, does the Commonwealth rest?

BY MR. RYDER: The Commonwealth rests.

(929) BY MR. LAWLEY: We have here a subpoena that was issued to Joseph C. Nissley by counsel for the Relator. Joseph C. Nissley is Secretary of the Board of Pardons, which is a Board within the Department of Justice of the State. We move to quash the subpoena on the ground that the records which have been subpoenaed are not public record; and second, for the reason that the records are for the convenience of the individual board members. We do not believe they should be taken away from the Board and introduced into evidence here in this Court. However, if the counsel for the defendant wishes to see what is in them—Mr. Margiotti, they are welcome to do so, but we do not wish to have them introduced and lost to us in the Department at Harrisburg.

BY MR. MARGIOTTI: We are going to see that they are not lost.

BY JUDGE MURPHY: Has Mr. Margiotti had access to this?

BY MR. LAWLEY: To this point, no sir.

BY JUDGE MURPHY: Do you or don't you object to him having a look at them?

BY MR. LAWLEY: No sir, we have no objection to Mr. Margiotti looking at them.

BY MR. MARGIOTTI: I can't very well proceed without

looking at them and it won't take me long to look at them, and it won't be long after I look at them —

BY JUDGE MURPHY: All right, it is now 12:35. We will recess then until (930) 2:00 o'clock.

(Recess.)

(Court resumes after the recess with all parties, including the Relator, David Darcy, present in Court.)

ATTORNEY WILLARD S. CURTIN, recalled.

RE-CROSS EXAMINATION (Continued).

BY MR. MARGIOTTI:

Q. Mr. Curtin, when you appeared before the Pardon Board during the session of March 20 and 21, 1951—that is the Pardon Board of Pennsylvania, did you appear in opposition to an application for commutation for David Darcy?

A. Well now, Mr. Margiotti, I appeared before the Pardon Board, as I recall, at least three times; once was the original hearing, once was when you were a member of the Pardon Board, and once was when you appeared for Mr. Darcy. Now, the date—I don't know which of the three occasions you are speaking about when you say "March 1951." Which of the three was that?

Q. When you appeared was I a member of the Pardon Board?

A. On one of the occasions, sir, you disqualified yourself from active participation in it, but you did sit with the Board who chastized me for a petition I filed.

Q. When you appeared and when I remained on the Board what happened?

A. Then the Board took a continuance to the next year.

Q. The case was continued from time to time?

A. That is true.

Q. You made some requests?

A. That is right.

Q. Then there was some continuance due to the fact we didn't have sufficient members of the Board?

A. That is right. I believe that is correct.

(1931) Q. Finally the case came up for argument on March 20 and 21 when I was out of the Attorney General's office?

A. I presume that is the rehearing you are speaking of. I recall that occasion. Now, what is your question?

Q. On that occasion did you not say:

"Now as to Darcy following the trial of Zietz and Foster, we will admit that the trial was a matter of about two or three weeks later. However, gentlemen, there was an entirely new panel drawn for the second jury, of course, and all those jurors were examined on their voir dire under oath and all of them testified they had no knowledge of the preceding cases and we assumed they were telling the truth when they said they had no opinion as the result of that previous trial, so I feel that was not a bad error in disposing of these cases in the manner that was done?"

A. I have no recollection of saying that. If the record says I did, I guess that would stand. But could I see the record? Would I be permitted —

Q. Didn't I ask you substantially that question —

BY JUDGE MURPHY: What about the request of the witness?

BY MR. MARGIOTTI: I will show it to him.

Q. Didn't I ask you substantially that question when you were on the stand before?

A. I believe you did, and I said I had no recollection of making that statement.

Q. Didn't you say you didn't make it?

A. I don't think so.

BY MR. VAN ARTSDALEN: (932) I object.

BY JUDGE MURPHY: The objection is overruled.

BY MR. MARGIOTTI:

Q. If you want to look at this record, I am willing to show it to you. It is the record of the Pardon Board. That is Page 19, top of the page.

A. I have seen it.

Q. You have seen it?

A. Yes sir.

Q. And if this record is accurate, that is what you said?

A. Yes sir. Can I explain it?

Q. You either said it or didn't —

BY JUDGE MURPHY: Do you object to him explaining?

BY MR. MARGIOTTI: I don't think it matters.

BY JUDGE MURPHY: The Court will be happy to hear an explanation if the witness has one.

BY MR. MARGIOTTI:

Q. Do you desire to explain?

A. Yes sir. It is quite obvious to me, sir, from my very hasty perusal of that section of the report that I in explaining

Atty. Willard S. Curtin—Re-cross

when the trial happened—perhaps was not clear in my enunciation and that the Reporter mistook the word "days" for "weeks," or it could have been I used the wrong word. I notice there was no questioning that expression by you immediately following my statement which would immediately indicate to me there was no question in your mind—there was no question in your mind what was meant.

(933) Q. Do you recall at the end of the argument that matter was discussed and you were to look up the records of what was the time between the Foster-Zietz trial and the Darcy trial?

A. In this case during my years as District Attorney I appeared on a number of occasions before the Pardon Board, before State tribunals and Federal tribunals. I have no recollection, sir, of what I said at any particular time in any particular one of those hearings.

Q. Now there is nothing in this statement that says there was a mistake made about you saying "weeks" in place of "days"?

A. I didn't know it was in that report until your just showed it to me. Therefore, I wouldn't know whether it was a mistake of fact in the transposition of "weeks" instead of "days."

Q. But look at Page 19. There is nothing in here that would indicate there was any mistake about "two or three weeks later" meaning "days"?

A. Obviously, sir, there was no doubt as to when the trial was held as to another trial so that, obviously, I made a mistake in using the word "weeks" instead of "days," or else I didn't enunciate clearly and the Stenographer mistook my word "days" for "weeks."

Q. You think you made a mistake?

A. Obviously, I must have because there was a trial and there is a record when the case started and "Now as to Darcy following the trial of Zietz and Foster, we will admit that the trial was a matter of about two or three weeks later."

BY JUDGE MURPHY: Didn't the Darey trial start two or three weeks after the Foster-Zietz trial started? We think it did, according to the records. The word "start" is not in there and the word "end" is not in there.

(934) BY MR. MARGIOTTI: The matter before the Board was it was immediately afterwards the other trial was started.

BY JUDGE MURPHY: It was started two weeks after the other was started but actually only four days after it ended—three days and a fraction. Either Thursday or Friday until Monday. When did the trial end—Zietz-Foster?

BY MR. VAN ARTSDALEN: Friday.

BY JUDGE MURPHY: Friday until Monday.

BY MR. MARGIOTTI:

Q. Now, do you—is your explanation confined to what you said here or what you did as just enumerated?

A. Mr. Margiotti, as I have just explained to you, I don't recall what I said at these various hearings. There were a number of hearings over the five years that I was appearing before various tribunals in reference to this matter and at times in allied matters. I can't recall what I said before each tribunal.

Q. You did testify, however, that "... all those jurors were examined on their voir dire under oath —"

BY MR. VAN ARTSDALEN: I object.

(935) BY MR. MARGIOTTI: "—and all of them testified they had no knowledge of the preceding cases?"

BY THE WITNESS:

A. I did not testify, sir.

BY MR. MARGIOTTI:

Q. You said it—let me say you said it.

BY JUDGE MURPHY: This Court has been before the Board of Pardons at least one hundred times in our day. We know you are not under oath. As a lawyer you are making a statement, as we made many, many statements.

BY MR. MARGIOTTI:

Q. You said that?

A. I said apparently what the record indicates that I said, yes sir.

Q. You were talking there about the panel?

A. Talking about what, sir? Yes, it would appear I was talking about the panel at that time. We usually speak about examining the members on their voir dire.

Q. Now, isn't it correct that one of the jurors did testify that he was present in Court during some of the days of the preceding trial?

BY MR. VAN ARTSDALEN: I object, a matter of record; it will appear of record.

BY JUDGE MURPHY: Will you kindly refer to the page in the record?

BY MR. MARGIOTTI: Page 218. Particularly on Page 220. The juror's name is William H. Slaughter.

(936) BY JUDGE MURPHY: Page 220—you say?

BY MR. MARGIOTTI: Yes sir.

Q. You understand the question?

A. I understand the question, sir. I am not familiar with what the record says in that respect. I have not seen the record in a couple of years. If it says that in the record, I presume that is what that particular juror said on his voir dire.

Q. If one juror did so testify, then your statement that you made that "... they had no knowledge of the previous cases —

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We understand that when the gentleman was before the Pardon Board he, in all probability, was telling the Board that none of the jurors who served on the case had this particular knowledge, whereas the juror which you referred to on Page 220 was excused and did not serve.

BY MR. MARGIOTTI: I know that.

When he was talking to the Board he was talking about the new panel that was drawn —

BY JUDGE MURPHY: Will you read his exact words for the record so that we can —

BY MR. MARGIOTTI: The witness himself has said he was talking about the panel.

BY JUDGE MURPHY: What were his exact words?

(937) "We will admit that the trial was a matter of about two or three weeks later. However, gentlemen, there

was an entirely new panel drawn for the second jury, of course, and all those jurors were examined on their voir dire under oath and all of them testified they had no knowledge of the preceding cases.

BY JUDGE MURPHY: You go ahead.

BY MR. MARGIOTTE: " . . . and we assumed they were telling the truth when they said they had no opinion as the result of that previous trial.

Q. Now, don't you know—I have called your attention to one juror, Mr. William H. Slaughter. Do you remember Anna W. Bucher?

A. I have no recollection of any individual jurors, no sir.

Q. Was she on the jury in the Darcy case?

A. I say, sir, I don't remember who the jurors were that were chosen to try David Darcy.

Q. Did you know at that time that Mrs. Bucher, whose testimony appears on Page 63, said that she had read recently—said "Well, I read something about it and heard something about it," and she was selected as a juror?

A. If the record indicates she was one of the jurors, then I assume that is correct, sir. If the record indicates that she said something like that, that too apparently would follow. I can only say in that connection that Mr. Achey was a very capable attorney; if he felt she was qualified to serve he must have had some knowledge that was not detrimental to your client.

(938) Q. I am asking you what you said before the Board and what the facts were —

A. Will you tell me what the question is you want answered —

Q. You are talking about Mr. Achey. I am talking about yourself and what the facts actually were as is compared to what you said to the Board.

A—You mean in reference to saying before the jury had no knowledge of the case that was tried before Darey —

Q. That is right.

A. That is right. The jury that Darey was tried by had no knowledge of the facts which were, at least, detrimental to Darey.

Q. And did you know at that time that another juror had testified he had heard the case discussed, and you told the Board "... they had no knowledge of the preceding cases?"

A. I don't recall, sir, what I said on any of those occasions. If the record says I said that, I must have said that. I agree to that.

BY MR. MARGIOTTI: I call the Court's attention to Mr. Harold Lake, Page 130 —

BY JUDGE MURPHY: Let me call your attention to the fact if there is a contradiction or variance, it does not make it substantive evidence for the purpose of these proceedings, which will attack credibility.

BY MR. MARGIOTTI: May I call Your Honor's attention to the fact that certain (939) jurors who were examined on their voir dire—without taking the time we are doing now—certain jurors who were examined on their voir dire testified they had knowledge of the Zietz-Foster trial, and they were: Anna W. Bucher, Page 60; William H. Slaughter, Page 218, 219, 220; Harold Lake, Page 130; Clarence G. Angeny, Page 130; William H. Slaughter, Page 218 —

BY JUDGE MURPHY: There is only one on Page 130. You have given two.

BY MR. MARGIOTTI: Page 130, only one, Harold Lake;

Clarence G. Angeny, Page 192; William H. Slaughter, Page 218; Charles L. Miller, Page 14; and Anna W. Bucher, Page 63—that is the same one —

BY JUDGE MURPHY: We have had that before.

BY MR. MARGIOTTI: That is the same as No. 1.

BY JUDGE MURPHY: Yes sir. You have named five so far.

BY MR. MARGIOTTI: Frank Sigley, Page 115; George B. Paxson, Page 89; William Pardoe, Page 48; Marvin D. Weidner, Page 68.

Q. Now you also added in what you stated to the Board that "... these jurors "said they had no opinion as the result of the previous trial?"

A. If the record says I said that, I probably did. I would say now that they very likely had no opinion of Mr. Achey wouldn't have left them serve.

BY JUDGE MURPHY: For the record the better practice is did you say thus (940) and so? instead of having counsel interpret the words for the Appellate Court.

BY MR. MARGIOTTI: I shall read the whole thing.

Q. Did you say: "... However, gentlemen, there was an entirely new panel drawn for the second jury, of course, and all those jurors were examined on their voir dire under oath and all of them testified they had no knowledge of the preceding cases and we assumed they were telling the truth when they said they had no opinion as the result of that previous trial, so

I feel that was not a bad error in disposing of these cases in succession in the manner that was done?"

Page 19.

Now for the record, since the minutes are in evidence, may we call Your Honor's attention only for convenience for the future that there were a number of jurors who were not even asked whether they had formed an opinion as to the guilt or innocence of the defendant, and that they were twelve in number being: Mabel Senderling, Page 3; Harry W. Warnbold, Page 13; J. Harper Atkinson, Page 14; Miriam W. Flory, Page 31; Frank Repetski, Page 35; John G. Ferguson, Page 41; Emma Shaddinger, Page 46; Marguerite Bergstresser, Page 51; Emily O. Higgenbottom, Page 71; John Barber, Page 78; Joseph E. Lownes, Page 82; Wesley H. Talley, Page 105.

And jurors who testified they had a fixed opinion in the Darcy case were fifteen in number, and they were: Charles L. Miller, Page 18; Jacob Shivo, Page 59; Anna W. Bucher, partially so, Page 63; Francis M. Phillips, Page 82; Harold Lake, Page 130; Harry Westlake, Page 96; Ernest F. Hamm, Page 122; Maude C. Buckman, Page 141; James G. Jackson, Page (941) 150; Albin Albrecht, Page 155; Robert W. Hall, Page 190; Elizabeth G. Elville, Page 226; Eva F. Kinsey, Page 234; Edmund C. Anderson, Page 237; Robert H. Clarendon, Page 250.

And then there were twenty jurors who were not asked whether or not they had any knowledge of the cases, and they are found on Pages—does the Court want me to give the names?

BY JUDGE MURPHY: Well, the better practice would be to give the number of the juror.

The Court has read the voir dire and we have the number that were challenged for cause by the Commonwealth, the number that were peremptorily challenged by the defendant,

the number that were peremptorily challenged by the Commonwealth, the number that were excused by the Court, and the number that were selected. We have read it; we have all of that.

BY MR. MARGIOTTI: All right then, we will give the numbers.

No. 1, No. 3, No. 4, No. 11, No. 13, No. 15, No. 18, No. 24, No. 32, No. 42, No. 44, No. 47, No. 57, No. 59, No. 64, No. 68, No. 71, No. 73, No. 80, and No. 61. That covers everything.

BY JUDGE MURPHY: All right, the Court has a duty to read the whole transcript from the beginning to end and make findings. But this is some help and we appreciate it.

BY MR. MARGIOTTI: I think it would be of some help. We made a summary too, just what Your Honor made, and we intend to include them in a brief.

BY JUDGE MURPHY: We appreciate the help, sir.

BY MR. MARGIOTTI:

(942) Q. Now, Mr. Curtin, do you know which eye Judge Keller has unfortunately lost the sight of?

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: We will permit it. If Judge Keller has an eye that is causing some trouble and adds light, we will take it. Answer the question if you know.

BY THE WITNESS:

Atty. Willard S. Curtin—Re-direct

A: I am sorry, sir, I do not know which of Judge Keller's two eyes is the false one.

BY MR. MARGIOTTI:

Q: Isn't it generally known that it is the right one?

A: I don't know.

BY MR. VAN ARTSDALEN: I object.

BY JUDGE MURPHY: The objection is sustained.

BY MR. MARGIOTTI:

Q: You don't know?

A: I would say that it isn't generally known that it is the right eye, sir.

BY JUDGE MURPHY: We sustained the objection. We will let the answer stand.

BY MR. MARGIOTTI: That is all.

RE-DIRECT EXAMINATION

BY MR. VAN ARTSDALEN:

Q: Mr. Curtin, do you recall whether the statements that you made (1943) before the Board of Pardons were challenged by Mr. Margiotti?

A: Again, sir, that was one of many hearings, and I don't recall just exactly what was said by either party at the hearing, or the others. I know a number of things were said at a number of hearings, but I can't recall what was said in anyone of them or what in rebuttal was said in anyone of them.

Atty. Willard S. Curtin— Re-direct

Q. I want to refer you to Page 10 of the transcript where Mr. Margiotti makes a statement, and ask you if you have any recollection of that statement being made?

A. I read the statement, and I assume since it is a part of the record that it is probably true, but I don't have any independent recollection of it.

BY JUDGE MURPHY: Just for the record and for the benefit of counsel—we may save you a little work and at least it will have you check on the work of the Court—according to the records, as we see it, there were 21 challenges for cause by the Commonwealth; there were seven pre-emptory challenges by the defense—let me start again—there were 21 challenges for cause by the Commonwealth; there were 7 challenges for cause by the defendant; there were 7 pre-emptory challenges by the Commonwealth; there were 16 pre-emptory challenges by the defense; there were 19 excused by the Court; there were 14 served on the jury; and the figures total 79 if you add those up. Then there was one juror who got sick or something who was excused, and it may be confusing because the total was 78 starting out.

All right, now go on with your examination.

BY MR. VAN ARTSDALEN:

Q. Mr. Curtin, do you recall Mr. Margiotti stating at that time: "They immediately put Darcy on trial right after the conviction (944) of these two men with a verdict of murder in the first degree with the death penalty. They put on the third person Darcy?"

A. I have no independent recollection of that statement by Mr. Margiotti.

Q. Do you have any recollection of Mr. Margiotti stating at that hearing: "My impression is that he did not ask for a

Atty. Willard S. Curtin—Re-direct

continuance, but I want to say to this Board as I have observed Mr. Curtin here before how fair he is, I am surprised he himself of his own motion didn't ask the Court to continue the case to a following term . . . ? Do you have any recollection of that?

A. Again, sir, I have no independent recollection of it, but if the record says that is what was said at the hearing, I assume that is correct.

Q. And did you challenge in any way the statements made by Mr. Margiotti as to when the case started?

A. Again, sir, I have no independent recollection of what I said following what Mr. Margiotti apparently said, but I would assume whatever the record indicates is correct.

BY MR. VAN ARTSDALEN: That is all.

BY MR. MARGIOTTI: That is all.

(Witness excused.)

BY MR. MARGIOTTI: By agreement of the parties in order that the transcript from the Pardon Board from which we have been examining Mr. Curtin may be returned to the Board, we have agreed that the question I propounded to Mr. Curtin may be introduced into evidence.

BY JUDGE MURPHY: Let me follow you—the question you propounded to Mr. Curtin (945) may be introduced into evidence —

BY MR. MARGIOTTI: Yes.

BY JUDGE MURPHY: It is already there.

BY MR. MARGIOTTI: The exact question, the testimony as

BY JUDGE MURPHY: There was no question by you to Mr. Curtin—was there—before the Pardon Board?

BY MR. MARGIOTTI: No, the question in —

BY JUDGE MURPHY: What you mean is what you read.

BY MR. MARGIOTTI: What I read here.

BY JUDGE WATSON: From that record.

BY MR. MARGIOTTI: Yes.

BY JUDGE MURPHY: Now I understand you.

We understand you are stipulating that the portion of the Pardon Board record which contains the context and the exact words which you included in your question to Mr. Curtin when you asked did you not say thus and so before the Pardon Board? be spelled out in this record.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: And so far as that portion itself is concerned, we will receive it, but only that portion so far. If counsel can agree (946) what the context or particular words are, yes, but we are not going —

BY MR. MARGIOTTI: Page 19:

“Now as to Darcy following the trial of Zietz and Foster, we will admit that the trial was a matter of about two or three weeks later. However, gentlemen, there was an entirely new panel drawn for the second jury, of course, and all those jurors were examined on their voir dire under oath —

BY JUDGE MURPHY: Are you agreeing that all of Mr.

Discussion

Curtin's remarks before the Board be spelled out in the record, the context as to what Mr. Curtin said, since he is the witness being challenged — Mr. Curtin's remarks before the Pardon Board on these occasions?

BY MR. MARGIOTTI: I am only reading what I asked for the purpose of contradiction.

BY JUDGE MURPHY: Haven't you read that on the record twice before?

BY MR. MARGIOTTI: Yes, I have to introduce evidence to contradict him.

BY JUDGE MURPHY: Go ahead.

BY MR. MARGIOTTI: "Now, as to Darcy following the trial of Zietz and Foster, we will admit that the trial was a matter of about two or three weeks later. However, gentlemen, there was an entirely new panel drawn for the second jury, of course, and all those jurors were examined (947) on their voir dire under oath and all of them testified they had no knowledge of the preceding cases and we assumed they were telling the truth when they said they had no opinion as the result of that previous trial, so I feel that was not a bad error in disposing of these cases in succession in the manner that was done."

BY JUDGE MURPHY: I assume you are offering it for two purposes: One, certainly to attack the credibility of Mr. Curtin —

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: I suppose the second purpose is

you are trying to show by that that Mr. Curtin was so biased and prejudiced—or is it?

BY MR. MARGIOTTI: That is part of it.

BY JUDGE MURPHY: ——— Mr. Curtin was so biased and prejudiced he made misstatements to the Pardon Board.

BY MR. MARGIOTTI: That is right.

BY JUDGE MURPHY: Any other reason?

BY MR. MARGIOTTI: No.

BY JUDGE MURPHY: All right, it will be received.
Now, does the Commonwealth desire to offer any portion of it, or not?

(948) BY MR. VAN ARTSDALEN: If the Court will indulge us ———

BY JUDGE MURPHY: Do you—or not?
We are only asking you so that we can complete this point and Mr. Margiotti ———

BY MR. VAN ARTSDALEN: Our agreement with him was we would agree that the record as to what he read states what he read if in turn he would agree what we read from the record is in the record.

BY MR. MARGIOTTI: That is true—if it is material.

BY JUDGE MURPHY: Will you mark out the portion of the record from which you read, that is the Commonwealth read; just a little indication somewhere on Page 10?

Discussion

BY MR. MARGIOTTI: Whether it is material or not, I will have no objection. Let it go into the record.

BY JUDGE MURPHY: You are attacking the man for being biased and prejudiced, and there is a statement by you he was a very fair person and we think that ought to go into context.

BY MR. MARGIOTTI: I am willing it goes in the record.

BY JUDGE MURPHY: It is going in whether you are or not.

BY MR. MARGIOTTI: I am not making any objection.

BY MR. VAN ARTSDALEN: "They immediately put Darcy on trial right after the (949) conviction of these two men with a verdict of murder in the first degree with the death penalty. They put on the third person Darcy."

That was the first statement referred to —

BY MR. MARGIOTTI: I object to his reading just that part of the sentence. I think he ought to read it all.

BY JUDGE MURPHY: That is what the Court suggested before about context. Now then, counsel has read, as we recall it, from Page 10 commencing with the last word on the second line:

"They immediately put Darcy on trial right after the conviction of these two men with a verdict of murder in the first degree. They put on the third person Darcy." Now then, Mr. Margiotti wants you to add:

"... That man should have never been put on trial, then. The attorney representing him didn't ask for a continuance. Is that right, Mr. Curtin?"

"Mr. Curtin: I am trying to find it.
Is that the part you want in?"

BY MR. MARGIOTTI: Yes, sir.

BY MR. LAWLEY: Again.

"Mr. Margiotti: My impression is he did not ask for a continuance, but I want to say to this Board as I have observed Mr. Curtin here before his fair he is. I am surprised he himself of his own motion didn't ask the Court to continue the case to a following term in order (950) to obtain a jury which had not heard the testimony whose minds had not been inflamed by a jury who just rendered an opinion."

BY JUDGE MURPHY: You offer that?

BY MR. LAWLEY: Yes, sir.

BY JUDGE MURPHY: Do you object?

BY MR. MARGIOTTI: No.

BY JUDGE MURPHY: Then they will both be received; all right.

BY MR. MARGIOTTI: "Exhibit No. 116," being that envelope with certain papers, we offered the envelope, and I am quite certain in my own mind that I offered its contents too. If I did not, I wish at this time to offer the contents of "Relator's Exhibit No. 116." I am only making the offer at this time as a precaution.

BY JUDGE MURPHY: It will certainly be received, because we have gone into them and discussed them, and they

Discussion.

were read then and examined. "Exhibit No. 116" including the contents are received in evidence. We think they were received before, but we reiterate.

BY MR. MARGIOTTI: My opinion, Your Honor, is sometime during the trial you asked me to spell out some page —

BY JUDGE MURPHY: I directed the Stenographer to copy it verbatim. I at no time asked you to spell it out. The Stenographer was directed to do it, and it will be spread on the minutes, the (951) Court minutes.

BY MR. MARGIOTTI: I want to offer that as well as what appears before and afterwards.

BY JUDGE MURPHY: We say for the record —

BY MR. MARGIOTTI: If the Court please, I believe that this was offered, but if it is not offered, we offer it at this time and ask leave to make photostats in substitution for the original record, which is Criminal Docket, "Relator's Exhibit No. 10," Pages 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, and 351.

BY MR. RYDER: If the Court please, I want the Court to understand — I believe probably the Court understands — that this record is the official record of the Court of Oyer and Terminer of Bucks County and contains not only reference to this case but reference to many, many other cases tried at that particular session of the Court of Oyer and Terminer of Bucks County. Now we have no objection, of course, as I have stated before, to the introduction in evidence of anything material relative to this proceeding. It is not my purpose to frustrate the cause of justice. I think we ought to have some sort of

understanding as to when these records will be returned to the Court of Oyer and Terminer of Bucks County.

BY JUDGE MURPHY: They have asked to substitute photostatic copies. That record is now in the custody of the United States Court and (952) will not depart from that custody until it goes into the Court of Bucks County. A matter of taking photostats of those pages would be a matter of minutes. Defense counsel, if they desire, can have it done on this floor by a photostat machine, and if it is done and the other parts are spelled out, the Court will direct—we may direct—we direct now that there be photostated those particular pages—instead of copying; it is quicker; then we will give counsel a few days to do that, or order it done and pay the bill when we get it.

BY MR. MARGIOTTI: Must we pay?

BY JUDGE MURPHY: I know you will—with your reputation for prompt payment; I am sure you will; and the book will go back—no problem about it.

BY MR. RYDER: I just want to get something on the record——

BY JUDGE MURPHY: If that machine won't take it, Wirth-Partridge's will.

We direct the book be turned over by the Court officer provided they pay the bill.

BY MR. MARGIOTTI: In the same exhibit we offer—Exhibit No. 103—we offer in evidence Pages 353, 353, 354, 355, 356, 357, and 358.

Discussion

BY MR. RYDER: Under the same terms and conditions —

BY MR. MARGIOTTI: Oh, yes.

BY JUDGE MURPHY: (953) They will be received under the same terms and conditions as heretofore spelled out.

I might say — a bit facetiously — they will not be photostated until there is an order from defense counsel so there will be no question of payment. We will make it possible.

BY MR. MARGIOTTI: My friend said we forgot to introduce the chairs.

BY JUDGE MURPHY: What?

BY MR. MARGIOTTI: My friend said we forgot to introduce the chairs.

If the Court please, we offer in evidence from the Criminal Minutes Pages 391 of May Term 1948 — 392, 393, 394 — those four pages, and ask leave to photostat them under further orders of the Court and substitute the photostats.

I think it would be better, Judge, to give this book a number. There was no number given to this book for some reason.

BY JUDGE MURPHY: All right.

(Exhibit marked "Relator's Exhibit No. 137.")

BY MR. MARGIOTTI: Those exhibits, Pages 391, 392, 393, and 394, are from "Exhibit No. 137."

BY JUDGE MURPHY: All right, is there objection?

BY MR. RYDER: (954) No objection.

Discussion

BY JUDGE MURPHY: They will be received under the terms and conditions heretofore spelled out.

BY MR. MARGIOTTI: The Relator rests.

BY MR. VAN ARTSDALEN: The Commonwealth rests.

BY JUDGE MURPHY: All right, now the next order of business, we take it, is to get—we have two problems before us: One, we have the Commonwealth's motion for dismissal, and that will—since the jurisdiction of the Court is attacked—will have to be met. And then we have the Relator's Petition for a Writ of Habeas Corpus, and that will have to be met in the event the Court finds jurisdiction.

Insofar as the Court reserved ruling throughout as to the admissibility of the various evidence offered by the Relator, the judgment of the Court is now made up, we receive that evidence; it was reserved subject to objection; we have received the evidence offered upon which we reserved ruling. That is all evidence offered by the Relator on which we reserved ruling. That is all received in evidence.

Now the question is do the Commonwealth and the Relator, either or both—do each of you order a copy of the transcript so the Court will have something to work with? Otherwise, we will not have a copy. It is going to be quite a record. You can either have it or not. If we don't have a transcript, we work from our notes. If we have a transcript, we work from both.

(955) Well, you can think it over and take it up with your respective colleagues. That is Problem No. 2.

BY MR. MARGIOTTI: May I express myself on that? We will want a copy.

BY JUDGE MURPHY: The Relator will want a copy, and the Commonwealth will decide later on—Mr. Ryder and his colleagues—whether they do or not.

We have notes here, and we have noticed an unfortunate situation where defendants will come before this Court and ask for a new trial and then we have to wrestle with our notes and conclude what happened, and when they go to the Circuit Court the Circuit Court gets a transcript, we haven't had it at all. At least here we will have one transcript.

Now then, the next order of business is it will take some time for the transcript to be ready and for the Court to rule on the matter. We hope the Stenographer will—we are going into a Term of Court on Monday. We will make up for the pre-trials we missed this week. And then the Court will have to rule.

Now then, we heretofore issued a written Order to the Attorney General directing that the defendant be produced in Court under further order of this Court. For the time being the need of the defendant's presence in these parts has terminated temporarily at least and we hope, so far as this Court is concerned, for good because no matter what the outcome is, one way or the other, it won't be before us, we hope.

Now then, we direct then that the custody of the Relator be continued by the State of Pennsylvania, but their obligation to keep him in Scranton is terminated as of the conclusion of (1956) this hearing. If there is any further need for him to be brought here, we will issue a new order.

Now then, is there anything else that either side have in mind?

Well, the Order of this Court was that the execution be stayed until this Court has disposed of the matter and we notice by all of the newspapers that it has been continued by the Governor until sometime in the future, but apart from what the Governor has done, the Order is that the execution be stayed until we have disposed of it, and that is sometime after

Discussion

the day after tomorrow and many days after tomorrow in the future—I don't know when.

Is there anything else, gentlemen?

BY MR. VAN ARTSDALEN: We have nothing.

BY JUDGE MURPHY: Do you have anything, Mr. Margiotti?

BY MR. MARGIOTTI: No, Your Honor.

BY JUDGE MURPHY: All right, the Court is now adjourned.

(Court adjourns.)

(957) CERTIFICATE

This is to certify that the foregoing is a true and correct transcript of my shorthand notes taken at the time of the hearing in the above-captioned case.

Official Court Reporter

ORDER

Now, 1954, it is hereby ordered that the foregoing transcript be filed and made a part of the records in the above-captioned case.

United States District Judge